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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-1308

FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES,

Petitioner,

v.

JOSEPH A. CALIFANO, JR., etc.; et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PRELIMINARY STATEMENT

The Petitioner, Florida Department of Health and Rehabilitative Services (HRS), respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on November 27, 1978.

OPINION BELOW

The opinion of the Court of Appeals is reported at 585 F. 2d 150 (5th Cir. 1978). That opinion affirms the decision of the United States District Court for the Northern District of Florida reported at 449 F. Supp. 274 (N.D. Fla. 1978).

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on November 27, 1978. No request for rehearing was filed. This petition for certiorari was filed within 90 days of the date of entry of the judgment of the Court of Appeals for the Fifth Circuit. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the federal government can require a state to structure its internal

administrative organization in a particular fashion in order to continue receiving federal funds for a vital social service program without violating the Tenth Amendment to the United States Constitution.

2. Whether the Intergovernmental Cooperation Act of 1968 permits the Secretary of the Department of Health, Education and Welfare to waive the organizational unit requirement of the Vocational Rehabilitation Act of 1973.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment X:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

United States Code, Title 29:

§721(a)(2)(A) Annual State plans; gereral and specific requirements

Because of length of text, this section is reproduced at pages A-75 to A-76 of the Appendix.

United States Code, Title 42:

§4214 Eligible State agency

Because of length of text, this section is reproduced at pages A-77 to A-78 of the Appendix.

Florida Statutes, Chapter 20:

§20.19(1) Purpose

The purpose of the reorganization of the Department of Health and Rehabilitative Services is to integrate the delivery of all health, social, and rehabilitative services offered by the state to those citizens in need of assistance, herein referred to as "clients." * * *

Florida Statutes, Chapter 20:

§20.19(3)(a) Assistant Secretaries

The secretary shall appoint an assistant secretary for operations, an

assistant secretary for program planning and development, and an assistant secretary for administrative services, each of whom shall serve at the pleasure of, and be directly responsible to, the secretary. The secretary shall appoint a deputy assistant secretary for program planning and a deputy assistant secretary for state health planning and development, each of whom shall serve at the pleasure of the secretary and shall be directly responsible to the assistant secretary for program planning and development.

Florida Statutes, Chapter 20:

§20.19(3)(b) Assistant Secretaries

The assistant secretary for operations shall be responsible for, and have line authority over, all service program operations of the department, including the management of all institutions and residential treatment programs, assuring that such programs comply with federal and state laws and regulations, and such other duties as

are assigned to him by the secretary. However, he shall delegate as much authority for the administration of service programs within the districts as practicable to the respective district administrators. The assistant secretary for operations shall have line authority over all departmental employees engaged in providing services directly to the client or support services therefor.

Florida Statutes, Chapter 20:

§20.19(3)(c) Assistant Secretaries

The assistant secretary for program planning and development shall have responsibility for general statewide supervision of the administration of service programs operated by the department and such other program development and planning duties as are assigned to him by the secretary.

* * *

Florida Statutes, Chapter 20:

§20.19(3)(c)2.e. Vocational Rehabilitation Program Office

The responsibilities of this office encompass all vocational rehabilitation programs operated by the department.

Florida Statutes, Chapter 20:

§20.19(4)(b) Service Districts

The secretary shall appoint a district administrator for each of the service districts. Each district administrator shall serve at the pleasure of the secretary and shall be directly responsible to the assistant secretary for operations. Each district administrator shall have direct line authority over all departmental programs assigned to the district. In addition to those responsibilities assigned by law, the district administrator shall carry out those duties delegated to him by the assistant secretary for operations. The salary of this position shall be

comparable to that of a division director of a state agency.

Florida Statutes, Chapter 20:

§20.19(4)(c)1 Service Districts

The duties of the district administrator shall include, but not be limited to:

1. Ensuring that the administration of all service programs is carried out in conformity with statewide service plans and any other policies, procedures, and guidelines established by the secretary.

Florida Statutes, Chapter 20:

§20.19(4)(e)1 Service Districts

There may be program supervisors in each district who shall serve in a line capacity to the district administrator and report directly to the district administrator or his designee. Program supervisors shall be appointed by the district administrator in conformity with qualifications established through state personnel system procedures. Program supervisors may be employed on

a full-time, part-time, or fee-for-service contractual basis. The duties of a program supervisor shall include, but not be limited to:

1. Administering district service programs in conformity with statewide policies, procedures, and guidelines established by the secretary.

STATEMENT OF THE CASE

This Petition arises from a judgment of the Circuit Court of Appeals for the Fifth Circuit affirming the decision of the District Court for the Northern District of Florida sustaining an administrative decision of the Commissioner of Rehabilitation Services Administration (RSA), a unit of the Department of Health, Education and Welfare (HEW), disapproving Florida's plan for the provision of vocational rehabilitation services under the Rehabilitation Act of 1973, 29 U.S.C. §§701 et seq. (applicable portion cited herein), and terminating Florida's

entitlement to receive federal funds under that Act. The District Court judgment also upheld the determination of the Secretary of HEW that he is without power, under the Intergovernmental Cooperation Act, 42 U.S.C. §§4201 et seq. (applicable portion cited herein), to waive the requirements of the Rehabilitation Act found by the Commissioner to have been violated by the Florida plan.

This is one of the most important and significant cases to reach the courts in the field of public administration. The unusual interest in the issues exhibited by the several amici who submitted briefs to the Circuit Court of Appeals in support of the Petitioner's position, and the active role throughout the litigation played by the National Rehabilitation Association (NRA), a nationwide organization, attests to the broad significance of this case for the administration of public benefit programs generally, and rehabilitation programs in particular. The case is of first impression, involving federal

statutory provisions not previously considered by the courts.

In 1975, Florida reorganized HRS for the purpose of "integrating[ing] the delivery of all health, social and rehabilitative services offered by the state to those citizens in need of assistance . . ." [Reorganization Act of 1975, Fla. Stat. Ann., §20.19(1) (see appendix)]. The concept was an attempt to deal comprehensively with the needs of those served by Petitioner, many of whom required services under several programs, rather than to have them touched separately by different divisions functioning independently and without regard to other available services. To accomplish this, the Petitioner was divided into three functional divisions -- Program Planning and Development, Operations, and Administration. Fla. Stat. Ann. §20.19(3)(a).

The Assistant Secretary for Program Planning and Development is responsible for "general statewide supervision of the

administration of services programs operated by the department." Fla. Stat. Ann., §20.19(3)(c). Within the Program Planning and Development Division are program offices for each program area. The Vocational Rehabilitation (VR) Program Office has plenary authority for the State's VR program. Fla. Stat. Ann., §20.19(3)(c)2.e. This office is headed by a full-time VR Program Director.

Under the reorganized Petitioner, the VR Program Director is responsible for VR policy and for supervision of the administration of VR programs. At the District level, the VR Program Supervisor is responsible for day-to-day implementation of these programs. Full-time professional rehabilitation personnel work under the Program Supervisor. The District Administrator and the Assistant Secretary for Operations supervise these District level personnel and are bound to operate the program in conformance with state and federal law. The treatment of VR is

identical to that of the seven other major program areas within the Department's responsibility. Fla. Stat. Ann. §§20.19 (3)(b), (4)(b), (c) and (e).

Shortly after the State Reorganization Act was enacted in June 1975, Petitioner submitted its annual VR plan for fiscal 1976 to RSA. There followed several months of negotiations concerning the compatibility of Florida's plan, which reflected the organizational changes mandated by state law, with the federal statute. In January, 1976, Petitioner submitted a revised plan but in March, 1976, the RSA Commissioner formally notified Petitioner of his intention to disapprove it on the ground that it did not confer authority over field operations to the head of the VR unit.

In the hearing RSA, represented by the HEW General Counsel's office, maintained that Petitioner's plan failed to satisfy federal standards because the VR Program Director did not have "line authority" over staff providing VR services at the District level; because he lacked adequate

authority to administer the VR program; and because the plan did not specify "clear lines" of authority for VR program administration. NRA participated in the hearing in support of the RSA position. The Administrative Law Judge made findings in accordance with the RSA position and recommended a decision adverse to Petitioner. Thereafter, after further briefing and argument, the RSA Commissioner on January 19, 1977, entered a final decision in accordance with the Law Judge's recommendations. The Commissioner acknowledged the considerable evidence on the question whether Florida's plan provided sufficient opportunity for the Program Director to exercise responsibility for the program notwithstanding the lack of "actual authority" over District level operations, and conceded that on this question "the record might support a finding either way." But he declined to resolve the question, holding instead that the federal statute cannot be satisfied where the responsibility for establishing

policy and enforcing it is "not accompanied by actual authority over operations."

The Intergovernmental Cooperation Act of 1968, 42 U.S.C. §§4214, authorizes any federal agency head to waive a requirement that a single state agency or multimember board or commission be designated to administer any federal grant program, where it is shown that the provision prevents establishment of the most effective and efficient organizational arrangements within the state government, and waiver would not endanger the objectives of the federal grant program.

On January 30, 1977, following the adverse decision by the RSA Commissioner in the plan disapproval proceeding, Governor Askew requested HEW Secretary Califano, who had assumed office subsequent to the final disapproval decision, to exercise his authority under this and another statute not under consideration here to waive the requirements of the Rehabilitation Act that had been the

basis for the disapproval of the State's plan. The Secretary's response expressed the view that states should have more latitude than at present to organize and manage federally funded programs. But he denied the waiver requests on the sole ground that the requested waivers were not authorized by the statutes cited. His conclusion was that both statutes were confined to waiver of "sole state agency" requirements and did not reach "organizational unit" requirements such as that contained in §721(a)(2) of 29 U.S.C.

Following denial of the waivers, suit was instituted. Petitioner sought an order setting aside the disapproval determination of the RSA Commissioner; a declaratory judgment that the HEW Secretary had authority to grant the waiver requested by Petitioner; and a finding that the federal requirements were violative of the Tenth Amendment. Additional points were addressed which are not a part of this petition.

On cross-motions for summary judgment, the District Court decided all issues in favor of HEW and intervenor NRA.

An appeal was timely taken to the Court of Appeals for the Fifth Circuit. That Court's decision is the subject of this Petition for Certiorari.

REASONS FOR GRANTING THE WRIT

1. THE DISAPPROVAL OF FLORIDA'S PLAN INVADES ITS RIGHTS TO CONTROL ITS INTERNAL ORGANIZATION PROTECTED BY THE TENTH AMENDMENT.

Throughout this proceeding, the Petitioner has advanced the contention that disapproval of its VR plan and threatened withdrawal of federal funding unless it changes its internal structure constitutes an infringement of its rights under the Tenth Amendment to the Constitution. The argument is supported by this Court's landmark decision in National League of Cities v. Usery, 426 U.S. 833 (1976), where federal restrictions that would have directly displaced the states' "freedom to

structure integral operations in areas of traditional governmental functions" were held unconstitutional. 426 U.S. at 852.

The case at bar presents the issue on which this Court deferred ruling: What protections the Tenth Amendment creates for the States, as States, challenging a Congressional enactment under the Spending Clause of the Constitution. Id., at 852, n. 17.

The controversy in the instant case turns on whether the single organizational unit requirement of the Rehabilitation Act precludes a state from enacting a statute which creates a "generalist" district administrator within the state administrative structure, who has some authority over vocational rehabilitation as well as other health and social service programs. The Petitioner asserts that Congress has authorized HEW to waive the single organizational unit requirement; and, even if not, the termination of federal grant-in-aid funds to Florida for failure of the

State to abide by an internal organizational requirement imposed by federal regulation invades rights guaranteed to the State under the Tenth Amendment.

It is clear that National League of Cities v. Usery creates substantive rights of states as states sufficient to exclude states from any national regulation under the Commerce Clause. The essence of National League of Cities is that states have the right to choose how the states' integral governmental functions will be performed. Speaking for the plurality, Justice Rehnquist said:

> "If Congress may withdraw from the states the authority to make these fundamental employment decisions upon which their systems for performance of these [integral governmental] functions must rest, we think there would be little left of the State's 'separate and independent existence . . .' [T]he dispositive factor is that Congress has attempted to exercise its Commerce Clause authority to prescribe minimum wages and maximum hours to be paid by the States in their capacities as sovereign governments. In so doing, Congress has sought to wield its power in a fashion

> that would impair the States' 'ability to function effectively within a federal system . . .' This exercise of Congressional authority does not comport with the Federal system of government embodied in the Constitution. Id., 857 (emphasis supplied, citations omitted).

Usery held that Congress was without authority under the Commerce Clause to dictate to the states how the state would carry out integral governmental activities -- these choices being exclusively state choices. This Court should balance the respective national interest in Petitioner's internal administrative structure against the state interest at stake.

Were Petitioner offending paramount national interests by discriminating against racial minorities, or by utilizing vocational rehabilitation funds to serve ineligible clients, or by requiring clients to satisfy a residency requirement, then the challenged national requirement should prevail. But such is not the case. The only national interest at stake is minimal, at best. In contrast, Petitioner's interest in organizing its internal government structure as it

chooses is substantial. Permitting a federal government veto of a state's internal governmental structure should not be countenanced in our constitutional federal system.

The constitutional protection of Petitioner's sovereignty via the Tenth Amendment is comparable to an individual's protestions via the First Amendment. The Court should employ the familiar balancing tests adopted for First Amendment analyses in deciding this Tenth Amendment case.

Justice Blackmun's concurrence in Usery lends weight to the balancing approach suggested by the State in the instant case. In his view, the Court "adopts a balancing approach, and does not outlaw federal power in areas . . . where the federal interest is demonstrably greater." National League of Cities v. Usery, supra, at 852.

The Petitioner urges that the requirement that a state have a "single organizational unit" in its vocational rehabilitation program be subjected to the familiar

two-pronged test: Does the requirement show a compelling and substantial national interest in requiring a state to have such an internal organizational structure? See, e.g., Shapiro v. Thompson, 397 U.S. 618 (1969). Even if it does, has the national government demonstrated that no less intrusive means on state sovereignty is available which will accommodate the national purpose? See, e.g., Shelton v. Tucker, 364 U.S. 479 (1960).

In its application of the Rehabilitation Act of 1973, 29 U.S.C. §721(a)(2)(A), HEW has unconstitutionally intruded upon policy choices of state sovereignty reserved by the Tenth Amendment to state decision. Petitioner has the right, authority, indeed duty, to organize its internal government in a manner which will deliver services efficiently, effectively and equitably. Petitioner cannot be penalized by HEW's withholding vocational rehabilitaiton funds for Petitioner's exercise of this fundamental right.

Our federal system requires that Petitioner's choice as to its internal governmental structure be upheld. Our Nation is founded upon

> "[A] recognition that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States are left free to perform their separate functions in their separate ways." Juidice v. Vail, 430 U.S. 327, 334 (1977) (citations omitted).

The Constitution requires that the Rehabilitation Act not supplant Petitioner's policy choice as to the internal organization of Petitioner's vocational rehabilitation administrative structure.

National League of Cities v. Usery, supra, requires that some deference be given to the states when Congress sets the conditions under which national grant-in-aid funds will flow to the states. It makes a mockery to call the states "sovereigns" if Congress has unbridled discretion to establish onerous and intrusive conditions to which states must

submit in order to receive sorely needed funds to provide sorely needed public services to their citizens.

The Commissioner and the District Court distinguished the Usery decision on the ground that it involved direct limitations on state power whereas this case involves conditions to the federal spending power. Oklahoma v. United States Civil Service Commission, 330 U.S. 127 (1947), and Florida v. Matthews, 526 F.2d 319 (5th Cir. 1976), were cited as establishing the plenary authority of Congress to impose conditions on federal grants which, if accepted, might significantly impinge on state authority and discretion.

No prior spending power case has involved the kind of deep intrusion into state internal organization and structure that is presented in this case. The Supreme Court long ago recognized the limits on Congressional power to impose conditions telling state governments how they should be organized. Coyle v. Oklahoma, 221 U.S. 559 (1911). Whether

the spending power would justify conditions that seriously impair reasonable state internal governmental organization measures has never been decided and, especially in light of the Usery decision, is most doubtful.

This Court need not attempt in this case to resolve the extended debate that the Usery case has inspired on the limits of spending power conditions that affect the exercise of state sovereignty, for the issue arises because of a strained and restrictive reading of the federal statute that advances no major federal program objective, but only the interests of a narrow interest group, and in fact conflicts with the federal objective, evidenced in the Intergovernmental Cooperation Act, of encouraging innovation, service integration and flexibility in state organization for administering grant programs. Moreover, the application of the statute in this case subverts a major reorganization effort of the largest

department in Florida government, adopted after substantial consideration by the State legislature.

As applied in this case, the spending power condition with these characteristics -- advancing no federal program goal, inconsistent with other federal objectives, and seriously intruding on major state internal reorganization -- seems clearly to cross the line from reasonable program conditions to displacement of state sovereignty. At the very least, the interference with the State's control over its internal operations is so severe as to warrant an application of the federal statute that avoids the Tenth Amendment issue. That opportunity is readily available in this case.

The concern of the Petitioner, in the case at bar, in preserving its right to structure its own internal governmental system, but still remain eligible for national grant-in-aid assistance for integral governmental services is not merely a hollow attempt to beat the states' rights drum.

The Petitioner has a legitimate concern that the services needed by its citizens can be more effectively delivered if the state service delivery structure is designed to meet the particular needs of a particular locale. It is the Petitioner's deeply held belief that the human service needs of Louisiana are different than those of New York City; and that different governmental organizational approaches are required in order to effectively deal with the diverse problems of the diverse states. One size does not fit all.

2. THE INTERGOVERNMENTAL COOPERATION ACT PERMITS THE SECRETARY OF HEW TO WAIVE THE ORGANIZATIONAL UNIT REQUIREMENT OF THE VOCATIONAL REHABILITATION ACT OF 1973.

The Intergovernmental Cooperation Act, 42 U.S.C. §4214, authorizes the Secretary to waive the organizational unit requirement of the Rehabilitation Act. That

section provides in pertinent part:

> "notwithstanding any other Federal law which provides that a single state agency or multimember board or commission must be established or designated to administer or supervise the administration of any grant-in-aid program, [any Federal agency head may] . . . waive the single State agency or multimember board or commission provision upon adequate showing that such provision prevents the establishment of the most effective and efficient organizational arrangements within the State government and approve other State administrative structure or arrangements . . . ."

The responsible federal official must determine that the objectives of the federal program will not be endangered by waiver.

The Intergovernmental Cooperation Act waiver provision should be construed to encompass the organizational unit aspects of the Rehabilitation Act in order to further its purpose of "allow[ing] States to reorganize their structure of government in order to permit integration of State agencies and functions," to the end

of "greater flexibility, . . . more efficient and practical State governmental administration." H. Rep. No. 1845, 90th Cong., 2d Sess., 1968 Cong. & Adm. News 4225. The statutory reference to a "single State agency . . . designated to administer or supervise the administration" of a grant program accommodates the organizational unit conditions of the Rehabilitation Act, for those conditions further define the eligible single state agency for the VR program. Moreover, the VR unit meets the definition of "agency . . . designated to administer" the state's VR program. Failure to so construe the statute would preclude the full application of the broad remedial purposes of the Act so far as the Petitioner's VR program is concerned.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Fifth Circuit.

Respectfully submitted,

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A P P E N D I C E S

APPENDIX I

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 78-2016

FLORIDA DEPARTMENT OF HEALTH
AND REHABILITATIVE SERVICES,

Plaintiff-Appellant,

versus

JOSEPH A. CALIFANO, JR., etc.,
et al.,

Defendants-Appellees.

Appeal from the United States District
Court for the Northern District
of Florida

(November 27, 1978)

Before THORNBERRY, GODBOLD, and HILL,
Circuit Judges.

PER CURIAM:

We affirm on the basis of the district court's opinion, 449 F.Supp. 274 (N.D. Fla. 1978).

AFFIRMED.

APPENDIX II

IN THE

UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF FLORIDA

TALLAHASSEE DIVISION

TCA 77-0772

FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES,

Plaintiff,

versus

JOSEPH A. CALIFANO, JR., etc.,

Defendant.

(March 28, 1978)

Before STAFFORD, United States District Judge

STAFFORD, District Judge: This is an action for a declaratory judgment to determine the rights and duties of the parties under the Rehabilitation Act, 29 U.S.C. §701, et seq., §204 of the Intergovernmental Cooperation Act of 1968 (IGCA),

42 U.S.C. §4214, and §6(c) of the Joint Funding Simplification Act of 1974 (JFSA), 42 U.S.C. §4255(c). In addition, plaintiff seeks review of a final administrative order rendered by the Commissioner of the Rehabilitation Services Administration (RSA) under authority delegated him by the Secretary of the United States Department of Health, Education and Welfare (HEW). Federal question jurisdiction is properly founded upon 28 U.S.C. §1331 and 2201 and 29 U.S.C. §721(d).

The plaintiff, Florida Department of Health and Rehabilitative Services (HRS or Florida), is the executive department of the State of Florida charged with the duty of administering the program of vocational rehabilitation services for the handicapped within the State of Florida. Defendant Joseph A. Califano is the Secretary of HEW, the federal agency responsible, through its sub-agency RSA, for administering the grant-in-aid program established pursuant to the Rehabilitation Act, 29 U.S.C. §720, et seq. The National Rehabilitation

Association, Inc. (NRA), a national organization with an interest in the provision of rehabilitative services to handicapped persons, has been granted leave to intervene as a party defendant.

Subchapter I of the Rehabilitation Act authorizes federal grants to the states to assist them in meeting the costs of providing vocational rehabilitation services for the handicapped. 29 U.S.C. §720. While participation by a state in the federal grant program is wholly voluntary, those states which elect to receive federal funds must in each fiscal year submit an annual vocational rehabilitation plan to the Secretary meeting certain requirements set forth in 29 U.S.C. §721. There are nineteen distinct requirements that must each be satisfied.

Only the first two of these mandatory requirements are pertinent to the instant lawsuit. First, the state must "designate a State agency as the sole State agency to administer the plan, or to supervise its

administration by a local agency . . . ."
29 U.S.C. §721(a)(1)(A). It is further provided that the sole State agency in charge of administering the plan be one of three types:

> (i) a State agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of handicapped individuals, (ii) the State agency administering or supervising the administration of education or vocational education in the State, or (iii) a State agency which includes at least two other major organizational units each of which administers one or more of the major public education, public health, public welfare, or labor programs of the State . . . .

29 U.S.C. §721(a)(1)(B).

Second, if the designated state agency is of the second or third category enumerated in Section 721(a)(1)(B), as is HRS, it must

> include a vocational rehabilitation bureau, division, or other organizational unit which (i) is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of handicapped individuals, and is responsible

> for the vocational rehabilitation program of such State agency, (ii) has a full-time director, and (iii) has a staff employed on such rehabilitation work of such organizational unit all or substantially all of whom are employed full time on such work . . . .

Section 721(b) of Title 29 mandates that the Secretary shall approve any annual state plan abiding by the nineteen conditions specified in subsection (a), and disapprove any plan failing to fulfill the stated conditions. This authority to approve or disapprove state vocational rehabilitation plans has been delegated by the Secretary to the Commissioner of RSA. 40 Fed. Reg. 5809 (Feb. 7, 1975). Prior to disapproving a state's plan, the Commissioner is required to notify the state of his intent to disapprove and to give the state reasonable notice and an opportunity for a hearing. 29 U.S.C. §721(b).

The present controversy arose when the Legislature of the State of Florida enacted legislation in 1975 reorganizing the internal structure of HRS, the designated sole

state agency in Florida for the administration of vocational rehabilitation services. Chapter 75-48, Laws of Florida 1975, Florida Statutes §20.19. This reorganization was incorporated into Florida's proposed Vocational Rehabilitation State Plan for Fiscal Year 1976 (Plan), which was submitted to RSA on January 30, 1976. On March 15, 1976, the Commissioner of RSA notified Florida of his intent to disapprove the Plan. In the Commissioner's view the Plan failed to adhere to the conditions of the Rehabilitation Act and HEW regulations promulgated thereunder because it did not satisfy the organizational unit requirement of 29 U.S.C. §721(a)(2).

A hearing on Florida's Plan was convened August 2 and 3, 1976, and October 6, 1976. The hearing officer who presided at the hearing issued a recommended decision on November 26, 1976, concluding that the Plan did not comport with the provisions of 29 U.S.C. §721(a)(2) and implementing regulations, 45 C.F.R. Part 1361. The hearing officer made the following specific findings:

(1) That the proposed Florida Plan for Vocational Rehabilitation for Fiscal Year 1976 does not provide for a full time director of the organizational unit responsible for vocational rehabilitation in Florida;

(2) That the designated director of the vocational rehabilitation organizational unit, the Program Director, lacks adequate authority and responsibility in the following areas;

(a) vocational rehabilitation services at the district and/or field level,

(b) vocational rehabilitation personnel that deliver the vocational rehabilitation services at the district and/or field level,

(c) in the interpretation and execution of plans, policies, procedures, and guidelines with respect to vocational rehabilitation programs at the district and/or field level,

(d) in the ability to take prompt corrective action for departures from established plans, policies, procedures, and guidelines of vocational rehabilitation at the district and/or field level,

(e) in the supervision of the district officials of the Florida Department of Health and Rehabilitative Services in charge of vocational rehabilitation programs and services at the district and/or field level, and

(f) over district vocational rehabilitation budgets and district cooperative agreements relating to district vocational rehabilitation activities:

(3) That the proposed Florida Plan for Fiscal Year 1976 fails to provide for clear lines of authority over vocational rehabilitation in Florida since the structure of the Florida Department of Health and Rehabilitative Services requires a shared or joint responsibility of the organizational unit by the Program Director and the district administrators with the latter officials responsible to the authority of the Assistant Secretary for Operations of the Department.

Record, Ex. 75, pp. 34-35.[1]

Florida filed exceptions to the recommended findings and conclusions, and the parties thereafter appeared before the Commissioner of RSA to present their opposing views regarding the recommendations. On

January 19, 1977, the Commissioner issued an order adopting the hearing officer's proposed findings and decision and disapproving the Florida Plan. He ordered that grants to Florida under the Act be discontinued after March 31, 1977.

On January 30, 1977, Florida Governor Reubin Askew wrote to Secretary Califano requesting a waiver of the Section 721(a)(2) organizational unit requirement. The request relied upon §204 of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. §4214, and §6(c) of the Joint Funding Simplification Act of 1974, 42 U.S.C. §4255(c), as the basis for the Secretary's authority to grant such a waiver. Section 4214 of Title 42 authorizes the head of an agency having responsibility over a grant-in-aid program to waive a statutory provision requiring a state to designate a single state agency to administer the program.[2] Similarly, 42 U.S.C. §4255(c) allows waiver of "a single or specific public agency" requirement.[3]

Secretary Califano responded to Governor Askew's letter on March 24, 1977, stating that he had no authority under either IGCA or JFSA to grant the requested waiver. In the Secretary's opinion both Acts allowed waiver only of single or specific state agency requirements of grant-in-aid legislation, such as is contained in 29 U.S.C. §721(a)(1)(A), but not of the organizational unit requirement found in 29 U.S.C. §721(a)(2).

Florida instituted the present action on March 25, 1977. An administrative stay of the fund cutoff order pending a decision by this court was sought by Florida and granted by the Commissioner of RSA. Consequently, Florida has continued to receive federal vocational rehabilitation grant funding during the pendency of this lawsuit.

Currently before the court are the following motions: (1) Florida's motions for summary judgment on Count I of the complaint and for partial summary judgment on Count II; (2) the cross-motions of the Secretary and

NRA for judgment on the pleadings or for summary judgment as to all matters raised in the pleadings; (3) Florida's motion for trial de novo and to permit discovery; (4) Florida's motion for consideration of supplemental material. The defendants have affirmatively indicated no objection to the last motion, and it shall be granted.

The remaining motions raise the following issues, which shall be discussed individually below: (1) whether the provisions of IGCA and UFSA permit the Secretary to waive the organizational unit requirement of 29 U.S.C. §721(a)(2); whether the administrative decision below was predicated upon application of an erroneous standard of law; (3) whether HEW's decision was based upon an internal program instruction that should have been promulgated as a rule; (4) whether the organizational unit requirement of 29 U.S.C. §721, imposed as a condition upon Florida's receipt of federal vocational rehabilitation funds, constitutes a violation of Article IV, §4, and Amendment X of the United States Constitution; and (5) whether Florida is entitled to further discovery and a trial de

novo on the question whether extraneous political pressure influenced HEW's decision. Having considered the various motions and the memoranda of counsel, the court decides all the above issues in favor of defendants. There being no genuinely disputed issues of material fact, summary judgment for defendants is appropriate.

Florida's primary contention in this case is that, contrary to the Commissioner's ruling, both IGCA and JFSA authorize waiver of the Rehabilitation Act's organizational unit requirement. Although the pertinent provisions of IGCA and JFSA speak only in terms of allowing waiver of single state agency requirements, Florida takes the position that the organizational unit requirement of the Rehabilitation Act is subsumed within the single state agency requirement, and authority to waive the latter necessarily carries with it authority to waive the former.

Since a literal reading of the cited statutes does not support its argument,

Florida places heavy reliance upon the legislative history of IGCA and JFSA. As Florida correctly notes, passage of IGCA was generated in part by concern that requiring designation of a single state agency to administer programs supported by federal grant-in-aid funds often hindered the states in their efforts to restructure state government and coordinate administration so as to facilitate the most efficient delivery of needed services. Greater organizational flexibility at the state level was thought to be essential.[4]

Similarly, JFSA was motivated by the realization that federal grant programs tended to focus on narrow program categories and denied the states the ability to deal with social needs in a comprehensive, rather than a piecemeal, fragmented, or duplicative manner. The single state agency requirements contained in several grant-in-aid statutes[5] were perceived as particular obstacles to the integrated provision of social services. Permitting waiver of such requirements would, in the

view of witnesses who supported passage of JFSA, eliminate much of the unnecessary organizational rigidity that had been imposed upon state governments and stimulate experimentation by the states in the delivery of necessary social services.[6]

Florida reasons from the expansive statements of congressional policy contained in the legislative history that IGCA and JFSA were designed primarily to ease federal constraints on state organization of its agencies and programs. Consequently, it is claimed, the waiver provisions of those Acts should be construed broadly to encompass waiver of the 29 U.S.C. §721(a)(2) organizational unit requirement.

Florida's contention that IGCA and JFSA were designed, at least in part, to ease excessively rigid state government organizational requirements is essentially correct, as is corroborated by the legislative history of the two Acts. It may also be, as Florida emphatically argues, that the 1976 Plan embodies very nearly the

kind of laudable experimentation sought to be encouraged by Congress. It is beyond question, however, that Congress never intended by enactment of IGCA and JFSA to permit waiver of the organizational unit requirement of 29 U.S.C. §721(a)(2). A literal reading of the relevant provisions strongly militates against such an interpretation of the legislative intent. IGCA speaks only of authority to waive "a single State agency or multi-member board or commission" requirement. 42 U.S.C. §4214. To like effect is JFSA, which contemplates waiver of "single or specific public agency" requirements. 42 U.S.C. §4255(c). Neither Act refers to an organizational unit requirement such as is contained in §721(a)(2).

Moreover, the structure of the Rehabilitation Act itself casts serious doubt upon the validity of Florida's claim that the organizational unit requirement should be viewed as being subsumed within the single state agency requirement. Section 721(a) of Title 29 delineates nineteen conditions,

each of which must be individually satisfied before a state vocational rehabilitation plan may be approved by HEW. The two specific requirements at issue in this case are found in separate provisions of Section 721(a); thus, the face of the statute provides no inkling that the two provisions are so intimately connected that authority to waive one must of necessity suggest authority to waive the other.

Additionally, the purposes of the single state agency requirement and the organizational unit requirement, as gleaned from the legislative history of the Rehabilitation Act, are entirely different, raising the likelihood that Congress would not have intended to tacitly permit waiver of the latter at the same time that it authorized waiver of the former. The single state agency requirement is designed to guarantee that HEW will have one and only one state agency to hold accountable for administering and supervising the State vocational rehabilitation plan.[7] This requirement has been a component of

the Rehabilitation Act for over three decades. Amendments to the Act in 1943 included the provision that a state plan shall "designate the state board of vocational education as the sole agency for the administration, supervision and control of the State plan." P.L. 113, §2(a)(1), 78th Cong., 1st Sess. (1943). In 1954 the Act was again amended to broaden the categories of state agencies that could be designated under a state plan, including "the State agency administering or supervising the administration of vocational rehabilitation in the State, or a State rehabilitation agency (primarily concerned with vocational rehabilitation) . . . ." P.L. 565, §5(a)(2), 83d Cong., 2d Sess. (1954). Amendments in 1965 changed the Act to read as it does presently. P.L. 89-333, §8(a)(1) & (2).

It was also in 1965 that Congress first added the separate condition that where the single state agency is of the type envisioned by 29 U.S.C. §721(a)(1)(B)(ii) & (iii), it must contain an organizational unit

"primarily concerned with vocational rehabilitation, or vocational and other rehabilitation." The purpose of this condition, which is quite distinct from that of the single state agency requirement, is to prevent the state vocational rehabilitation unit and the program it administers from becoming submerged within other programs administered by the state agency.[8] Congress was concerned that there be clear lines of authority and responsibility within the state agency over the provision of rehabilitative services, and that administration of the program be the province of persons concerned almost exclusively with vocational rehabilitation and not with other social service programs. The congressional intent that the state rehabilitation unit maintain its organizational identity is embodied in the statute by the requirement of a full-time director for the unit and a staff which must devote most or all its time to vocational rehabilitation work. 29 U.S.C. §721(a)(2).

Given the divergent purposes of the single state agency and organizational unit requirements, it is wholly inappropriate

to apply the same treatment to both under IGCA and JFSA. The only reading that may properly be given the waiver provisions of IGCA and JFSA in this context is that which appears plainly upon the face of those statutes; that is, they authorize waiver only of the single state agency condition, not the organizational unit condition.[9]

The second point upon which Florida challenges the administrative ruling below is the contention that the decision was predicated upon the application of an erroneous standard of law. The scope of this court's review of the agency decision is bounded by the Administrative Procedure Act, which provides in pertinent part:

> To the extent necessary to decision and when presented, the viewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall --
>
> . . .
>
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be --

> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
>
> . . .
>
> (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

5 U.S.C. §706. As stated in Securities & Exchange Commission v. Chenery Corp., 332 U.S. 194, 207 (1947), the court's "duty is at an end when it becomes evident that the [agency's] action is based upon substantial evidence and is consistent with the authority granted by Congress."

Florida contests HEW's conclusion that "the Federal Act not only requires the VR organizational unit to be responsible for the state VR program, but it also requires that the director of the unit have authority and responsibility to control the functions and activities of the unit." Record, Ex. 75, p. 25. In plaintiff's view, this conclusion does not square with the language of 29 U.S.C. §721(a)(2),

which declares that the organizational unit shall be "responsible for the [state's] vocational rehabilitation program," but which does not set forth specifically the duties or authority to be possessed by the director of the unit. In particular, Florida seizes upon isolated language in the hearing officer's recommended decision to the effect that "the primary objection to the Florida Plan is the absence of an unqualified authority by the Program Director over the field VR personnel." Record, Ex. 75, p. 23 (emphasis added). Florida takes the position that the Vocational Rehabilitation Act does not require the director of the rehabilitation unit to have more than generalized authority over the program, and certainly does not require that he possess "unqualified authority" over the program and the personnel in the field. Thus, the argument goes, HEW applied an erroneous standard of law in making its ruling, and the Florida Plan, which gives direct authority over implementation of the program not to the director of the rehabilitation unit, but to district administrators

who are also in charge of supervising other social service programs, is in full conformity with the Act.

Had the administrative decision below rested upon application of a standard of "unqualified authority" as the test of compliance with §721(a)(2), this court would agree that the ruling was in error. It is manifest from a review of the decision of the Commissioner of RSA and the findings of the hearing officer, however, that this was not the legal standard applied. The hearing officer found that Florida's Vocational Rehabilitation Plan for 1976 "does not provide for a full time director of the organizational unit responsible for vocational rehabilitation in Florida." Record, Ex. 75, p. 34. Specifically, it was concluded that the designated director of the organizational unit "lacks adequate authority and responsibility" over personnel and the delivery of vocational rehabilitation services at both the district and field levels. Id. The authority of the director over the program was also found

to be deficient in several other respects. Id. at 34-35.

Despite the hearing officer's doubtlessly inadvertent use at one point of the phrase "unqualified authority," the administrative decision below rests not on whether the unit director's authority was total and without qualification, but on whether it was adequate to fulfill the directives of §721(a)(2). This was the correct legal standard. Necessarily implicit in the statutory requirement that the organizational unit have responsibility for the vocational rehabilitation program is a requirement that the director of the unit have substantial authority over the functioning of the program. Without providing substantial authority for the director over the entire operation of the program, Florida's Plan cannot comply with the intent of Congress that the program not become submerged within the other social service programs administered by the state. The diffusion of program authority that is effected by giving the district administrators primary

responsibility over the provision of services is precisely the situation Congress sought to avoid.[10] Consequently, HEW's decision to disapprove the Plan was correct.

Florida's third major contention requires little discussion. Florida alleges that HEW's decision should be overturned because it relied in part upon an interpretative memorandum that ought to have been promulgated as a rule in accordance with the rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. §551 et seq. At issue is RSA Program Instruction 75-31, which contains an agency interpretation of those portions of the Rehabilitation Act relevant to the organizational unit requirement, and a listing of those functions of the unit director deemed essential to carry out the legislative intent of the Act. HEW specifically relied upon this interpretative memorandum to some extent in disapproving Florida's Plan. See Record, Ex. 75, p. 16.

Having reviewed RSA Program Instruction 75-31, this court is of the view that it

constitutes mere interpretation, which is exempted from the rulemaking provisions of the APA. 5 U.S.C. §553. It does not deviate from the policies established by Congress in the Rehabilitation Act and by HEW in its formally promulgated regulations, nor does it create any new burdens upon those affected by its provisions or make any drastic changes in existing law. See Continental Oil Co. v. Burns, 317 F. Supp. 194 (D. Del. 1970). Consequently, HEW did not err in issuing the memorandum without formal promulgation under the APA or in relying upon the memorandum in making the decision presently under review.

For its fourth point of contention Florida asserts that the Rehabilitation Act, to the extent it conditions receipt of federal grant monies on the adoption by a state of a particular governmental structure, constitutes an invalid encroachment upon the powers and prerogatives of the states in derogation of Article IV, §4,[11] and Amendment X of the United States Constitution.[12] This contention relies heavily, if not exclusively, upon

the Supreme Court's ruling in National League of Cities v. Usery, 426 U.S. 833 (1976). That decision held that extension of the minimum wage and maximum hours provisions of the Fair Labor Standards Act to employees of the states and their political subdivisions violated the Tenth Amendment. The majority opinion noted that "the Act displaces state policies regarding the manner in which they will structure delivery of those governmental services which their citizens require." Id. at 847.

The defendants respond that National League of Cities is inapposite to the facts and issues in the case at bar, and that consequently Florida's reliance on that decision is misplaced. They point to other federal decisions, most of them prior to National League of Cities, which establish that Congress has the power to fix conditions upon receipt by the states of federal grant funds, even though the legislation may to some degree intrude upon areas traditionally left to the discretion of the states under the Tenth Amendment. In Oklahoma v. United

States Civil Service Commission, 330 U.S. 127 (1947), the Supreme Court upheld a provision of the Hatch Act authorizing termination of grant-in-aid funds to any state which fails to discharge a state employee involved in partisan political activities. Mr. Justice Reed, writing for the court, reasoned:

> While the United States is not concerned with, and has no power to regulate, local political activities as such of state officials, it does have power to fix the terms upon which its money allotment to states shall be disbursed.
>
> The Tenth Amendment does not forbid the exercise of this power in the way that Congress has proceeded in this case. As pointed out in United States v. Darby, 312 U.S. 100, 124, the Tenth Amendment has been consistently construed "as not depriving the national government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end."

Id. at 143 (emphasis added). The Oklahoma case has been consistently followed by the lower federal courts in determining that

Congress has the authority to attach conditions upon monetary grants to the states, in spite of countervailing considerations of the Tenth Amendment. Florida v. Matthews, 526 F. 2d 319 (5th Cir. 1976); Arizona State Dep't. of Public Welfare v. Department of Health, Education, and Welfare, 449 F. 2d 456 (9th Cir. 1971); Dupler v. City of Portland, 421 F. Supp. 1314 (D. Maine 1976).

The contentions advanced by the parties necessitate harmonizing National League of Cities with Oklahoma and its progeny. This task is not a difficult one for this court to discharge. The Supreme Court stated its essential holding in National League of Cities as follows:

> This exercise of congressional authority does not comport with the federal system of government embodied in the Constitution. We hold that insofar as the challenged amendments operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions, they are not within the authority granted Congress by Art. I, §8, cl. 3 [the commerce clause].

Id. at 852 (emphasis added). As seen from the above quotation, the narrow holding in National League of Cities is restricted to disapproval of congressional enactments that "directly displace" the power of the states to organize their own governments as they see fit. This rationale has no application to a case like the present one where the federal intrusion is wholly indirect and limited to measures meant to insure the proper functioning of federally funded programs.

Moreover, the Supreme Court declined in National League of Cities to express any "view as to whether different results might obtain if Congress seeks to affect integral operations of state government by exercising authority granted it under other sections of the Constitution such as the spending power, Art. I, §8, cl. 1, or §5 of the Fourteenth Amendment." Id. at 852 n. 17. Federally imposed restraints on state and local government activities which accompany federal grants to the states have in fact long been regarded as

unobjectionable exercises of Congress' constitutional spending power. As the Court of Appeals for this Circuit held in Florida v. Matthews, supra:

> Likewise appellants' Tenth Amendment objections are without merit. Congress and the Secretary have not attempted to establish a federal licensing board in an attempt to prevent the states from regulating nursing home administrators. Instead, the statute and regulation merely establish terms and conditions under which federal assistance will be provided to states that elect to participate in the nursing home component of the medicaid program. The only effect of the statute and regulation is to induce, but not require, a state to license its nursing home administrators in a specified manner; this inducement does not infringe upon any power reserved to the state under the Tenth Amendment.
>
> . . .
>
> Once a state chooses to participate in a federally funded program, it must comply with federal standards.

526 F. 2d at 326. See also Dupler v. City of Portland, supra.

The conclusion that the requirements of 29 U.S.C. §721(a)(2) are within the proper scope of the congressional spending power and are not constrained by the Tenth Amendment is further fortified by the purely voluntary nature of the requirements. Congress, through the Rehabilitation Act, has extended substantial grants-in-aid to the states as an inducement for their participating in a shared program providing vocational rehabilitation services to the handicapped. This inducement carries with it certain conditions Congress deems essential to the functioning of the program; however, any state which objects to the "strings" attached to receipt of the federal funds has the option to refuse both the grants-in-aid and the objectionable conditions. The Act does not impose a set of coercive, mandatory requirements such as were involved in National League of Cities. The remarks of the district court in Dupler, supra, are amply persuasive:

> In addition, the operation and practical effect of the federal statute is very different here than in National League of Cities.

> Unlike the FLSA amendments, which the states had no choice but to obey, the requirements of the Federal Food Stamp Act are not mandatory, but are impressed on state and local governments only as a condition of participation in the food stamp program. The decision whether to participate is voluntary with the states . . . . Since there is no requirement that a state participate, there is no coercion and thus no possible interference with state sovereignty. See Steward Machine Co. v. Davis, 301 U.S. 548, 586-90, 57 S. Ct. 883, 81 L. Ed. 1279 (1937).

421 F. Supp. at 1320-21 n. 8.

Accordingly, it is the opinion of this court, and the court so holds, that the conditions imposed upon the states pursuant to 29 U.S.C. §721(a)(2) prior to their eligibility for federal grant funds under the Rehabilitation Act do not offend either the Tenth Amendment or the guarantee of a republican form of government for the states contained in Art. IV, §4 of the United States Constitution.

Florida has also moved for a trial de novo in this court plus further discovery on the issue, initially raised in the administrative

proceedings below, of whether improper political pressure was applied to HEW during the time Florida's Plan was under review. See D. C. Federation of Civic Associations v. Volpe, 459 F. 2d 1231 (D. C. Cir. 1972); Texas Medical Association v. Mathews, 408 F. Supp. 303 (W. D. Tex. 1976). Florida places special emphasis upon a letter from Congressman John Brademas, Chairman of the House Subcommittee on Select Education, to then-Secretary of HEW David Mathews dated October 7, 1975. In this letter Congressman Brademas expressed his concern and the Committee's belief that the Florida Plan was not in conformity with the Rehabilitation Act and the expressed intent of Congress in passing the Act. Florida contends that this letter provides evidence of extraneous political pressure sufficient to warrant this court's undertaking the extraordinary procedure of re-opening discovery and conducting a judicial trial de novo to determine whether improper congressional influence affected HEW's decision.

Despite its strenuous efforts, Florida has shown no reason why this court should

make further inquiry into this matter. The primary reason why Florida's motion should be denied is that a trial de novo is precluded by the applicable provision of the Administrative Procedure Act, 5 U.S.C. §706, which limits judicial review of agency proceedings to review of the administrative record. United States v. Bianchi & Co., 373 U.S. 709, 715 (1963).

Further, the record below demonstrates that Florida had an ample opportunity to conduct discovery on this issue and to present all available evidence during the administrative hearing. Extensive use of interrogatories and depositions of HEW and NRA officials evidently uncovered scant intimations of unwarranted influence, for there is nothing in this record to suggest that political considerations actually tainted the decision below. Florida's motion merely seeks a repetitive round of discovery and another hearing on matters already fully presented at the administrative level.

As far as the Brademas letter is concerned, this single item of correspondence raises no inference of impropriety. In Federation of Civic Associations v. Volpe and Texas Medical Association v. Mathews, supra, the extrinsic pressure that was alleged to have affected the agency action consisted of coercion of the most virulent kind -- threats of loss of agency funding or of the job of the agency official charged with making the decision. The Brademas letter, which is the only arguable indication of political influence found by Florida as a result of extensive discovery, is of a much different character. It contains no threats of adverse action against HEW or its officials. On the contrary, it merely expresses Congressman Brademas' concern that HEW might grant the waiver desired by Florida, an action which he believed would be contrary to the legislative intent.

Moreover, the letter was not directed to the Commissioner of RSA, who had actual responsibility for approving or disapproving the Florida Plan, but to the Secretary,

who at the time had before him only Florida's request for a waiver of the organizational unit requirement pursuant to IGCA or JFSA. The letter has no relation to the final decision under review here, particularly since Florida has adduced no proof that the Commissioner was aware of, or influenced by, contact between the Secretary and Congressman Brademas. In fact, HEW has produced internal memoranda and affidavits signed by Andrew S. Adams, then-Commissioner of RSA, and Frederick Sachs, Assistant Commissioner for Program Management of RSA, which tend to substantiate that no improper influence affected the Commissioner's decision. Florida has not attempted to rebut this documentary evidence.

Florida having failed to support its claim relating to possible extraneous political influence, there is no cause for this court to grant the motion for trial de novo and further discovery.

Having reviewed the administrative record, and having considered the motions

and the memoranda of counsel, it is the opinion of this court that the decision of the Commissioner of RSA disapproving Florida's Vocational Rehabilitation Plan for Fiscal Year 1976 is not in error under the applicable law and regulations. Consequently, defendants' motions for summary judgment should be granted, and the administrative ruling under review should be upheld.

ORDER

In accordance with the foregoing memorandum opinion, it is ORDERED AND ADJUDGED that:

1. Florida's motion for consideration of supplemental material be, and the same hereby is, GRANTED.

2. Florida's motion for summary judgment on Count I of the complaint and motion for partial summary judgment on Count II of the complaint be, and the same hereby are, DENIED.

3. Florida's motion for trial de novo and to permit discovery be, and the same hereby is, DENIED.

4. The motions of HEW and NRA for summary judgment be, and the same hereby are, GRANTED. Judgment shall be entered in favor of defendants declaring that the administrative decision below is affirmed in all material respects.

DONE AND ORDERED this 28th day of March, 1978.

WILLIAM STAFFORD, U.S. DISTRICT JUDGE

FOOTNOTES FOLLOW

FOOTNOTES:

1. All citations in this opinion to the administrative record shall be by reference to the relevant exhibit and page numbers.

2. 42 USC §4214 provides:

> Notwithstanding any other Federal law which provides that a single State agency or multimember board or commission must be established or designated to administer or supervise the administration of any grant-in-aid program, the head of any Federal department or agency administering such program may, upon request of the Governor or other appropriate executive or legislative authority of the State responsible for determining or revising the organizational structure of State government, waive the single State agency or multimember board or commission provision upon adequate showing that such provision prevents the establishment of the most effective and efficient organizational arrangements within the State government and approve other State administrative structure or arrangements: Provided, That the head of the Federal department or agency determines that the objectives of the Federal statute authorizing the grant-in-aid program will not be endangered by the use of such other State structure or arrangements.

3. 42 U.S.C. §4255(c) provides:

> In promoting the more effective and efficient use of Federal assistance resources, Federal agency heads may waive requirements that a single or specific public agency be utilized or designed to receive, supervise, or otherwise administer a part of the Federal assistance drawn upon by any jointly funded project to the extent that administration by another public agency is determined to be fully consistent with applicable State or local law and with the objectives of the Federal assistance program involved. This authority may be exercised only (1) upon request of the head of a unit of general government, with respect to agencies that he certifies to be under his jurisdiction, or (2) with the agreement of the several State or local public agencies concerned.

4. See hearings on H.R. 16718 and Related Bills Before the Subcommittee on Intergovernmental Relations, Committee on Governmental Operations, 90th Cong., 2d Sess., 87, 116, 121, 148-49 (1968).

5. See,e.g., 42 U.S.C. §602(a)(3) (Aid to Families with Dependent Children); 42 U.S.C. §705(a)(2) (Maternal and Child Health); 20 U.S.C. §1263(a)(2) (Vocational Education).

6. See Hearings Before the Intergovernmental Relations Subcommittee of the House of Representatives Committee on Government Operations, 93d Cong., 2d Sess.,

1-2, 217, 267 (1974).

7. See S. Rep. No. 1456, 90th Cong., 2d Sess., 16 (1968).

8. See H. R. Rep. No. 432, 89th Cong., 1st Sess., 13-14 (1965); Hearings on S. 1525 Before the Subcommittee on Health of the Senate Committee on Labor and Public Welfare, 89th Cong., 1st Sess. 42-43 (1965).

9. A subsidiary issue between the parties is whether JFSA permits waiver only of administrative, but not of statutory, requirements. The court's ruling that 42 U.S.C. §4255(c) does not contemplate waiver of the organizational unit requirement (even if waiver of statutory requirements is permitted) renders decision of this question unnecessary.

10. The congressional intent is further fleshed out by HEW regulations detailing the requirements a state plan must meet to satisfy the organizational unit requirement. 45 C.F.R. Part 1361. The decision and findings below were fully in accord with these regulations, and Florida has not challenged their validity.

11. Art. IV, §4, of the United States Constitution provides:

> The United States shall guarantee to every State in this Union a Republican Form of Government

and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

12. The Tenth Amendment states:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

13. The dissenting opinion of three Justices in National League of Cities provides additional support for this court's reading of that decision. Apparently it was the understanding of the dissenters that the majority did not intend to rule out Congress' ability to condition receipt of grants-in-aid on compliance with federally imposed restrictions on state government. 426 U.S. at 880 (Brennan, J., dissenting).

APPENDIX III

United States Code, Title 29:

§721. State plans

(a) Annual State plans; general and specific requirements

For each fiscal year in which a State desires to participate in programs under this subchapter, a State shall submit to the Secretary for his approval an annual plan for vocational rehabilitation services which shall--

(2) State rehabilitation bureau; director; staff; major organizational status; separate units for services to the blind and for other services

provide, except in the case of agencies described in clause (1)(B)(i)--

(A) that the State agency designated pursuant to paragraph (1) (or each State agency if two are so designated) shall include a vocational rehabilitation bureau, division, or other organizational unit which

(i) is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of handicapped individuals, and is responsible for the vocational rehabilitation program of such State agency, (ii) has a full-time director, and (iii) has a staff employed on such rehabilitation work of such organizational unit all or substantially all of whom are employed full time on such work; and

APPENDIX IV

United States Code, Title 42:

§4214. Eligible State agency

Notwithstanding any other Federal law which provides that a single State agency or multimember board or commission must be established or designated to administer or supervise the administration of any grant-in-aid program, the head of any Federal department or agency administering such program may, upon request of the Governor or other appropriate executive or legislative authority of the State responsible for determining or revising the organizational structure of State government, waive the single State agency or multimember board or commission provision upon adequate showing that such provision prevents the establishment of the most effective and efficient organizational arrangements within the State government and approve other State administrative structure or arrangements: Provided, That the head of the

Federal department or agency determines that the objectives of the Federal statute authorizing the grant-in-aid program will not be endangered by the use of such other State structure or arrangements.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 1979, three copies of the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit were mailed, postage prepaid, to CARL HARPER, Regional Attorney, Department of Health, Education & Welfare, Rm. 323, 50 7th St., N.E., Atlanta, Georgia 30323; CLINTON ASHMORE, Assistant U.S. Attorney, Federal Bldg., Tallahassee, Florida 32302; ALLEN SNYDER, Attorney for National Rehabilitation Assoc., 815 Connecticut Ave., N.W., Washington, D.C. 20006; and THE SOLICITOR GENERAL, Department of Justice, Washington, D.C. 20530.

GEORGE LEE WAAS
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Of Counsel for Petitioner

Supreme Court, U. S.
FILED
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No. 78-1308

In the Supreme Court of the United States

OCTOBER TERM, 1978

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v.

JOSEPH A. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the district court (Pet. App. 33-74) is reported at 449 F. Supp. 274. The opinion of the court of appeals (Pet. App. 31-32) is reported at 585 F. 2d 150.

JURISDICTION

The judgment of the court of appeals was entered on November 27, 1978. The petition for a writ of certiorari was filed on February 23, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Rehabilitation Act of 1973 violates the Tenth Amendment by conditioning the granting of federal

vocational rehabilitation funds to a state on the state's administering its vocational rehabilitation program in compliance with the requirements of the Act.

2. Whether the Secretary of Health, Education, and Welfare has the authority under the Intergovernmental Cooperation Act to waive the "organizational unit" requirement of the Rehabilitation Act of 1973.

STATEMENT

1. The Rehabilitation Act of 1973, 29 U.S.C. 720 *et seq.*, authorizes grants of federal funds to the states to assist programs for the handicapped. State participation in the grant program is voluntary, but participating states must submit an annual plan for vocational rehabilitation services that satisfies the conditions set forth in Section 101 of the Act, 29 U.S.C. 721. Among these is a requirement that the state designate a single agency to administer its vocational rehabilitation plan. 29 U.S.C. 721(a)(1)(A).

The designated state agency must be one of three general types: it may be the agency primarily concerned with rehabilitation of the handicapped in the state; or it may be the agency that supervises or administers education or vocational education in the state; or it may be an agency that includes at least two other major organizational units, each of which administers a major public education, health, welfare, or labor program in the state. 29 U.S.C. 721(a)(1)(B). If the state agency is of the second or third type, it must include an organizational unit, with a full-time director, that is responsible for the agency's vocational rehabilitation program. 29 U.S.C. 721(a)(2)(A). This is known as the "organizational unit" requirement. The Act requires the Secretary to disapprove any plan that does not fulfill the statutory conditions. Before disapproving any state plan, the Secretary must notify the state of his intent to disapprove the plan, and he must afford the state an opportunity for hearing on the matter. 29 U.S.C. 721(b).

2. In early 1976 Florida submitted its proposed vocational rehabilitation plan for that year to the Rehabilitation Services Administration.[1] The plan reflected the 1975 reorganization of the State's Department of Health and Rehabilitation Services, the state agency designated by the Florida legislature to provide vocational rehabilitation services. The Commissioner of the Rehabilitation Services Administration concluded that the Florida plan did not satisfy the requirements of the Rehabilitation Act, and he notified the Governor of Florida that he intended to disapprove the plan. Among the deficiencies identified by the Commissioner were (1) the lack of authority in the vocational rehabilitation program director to direct the program, as required by 29 U.S.C. 721(a)(2) and the implementing regulations at 45 C.F.R. 1361.6 to 1361.8, and (2) the absence of clear lines of authority in the vocational rehabilitation units, as required by 45 C.F.R. 1361.7(a)(2) (Pet. App. 37-38).

After a hearing on the proposed plan, the hearing officer found that the plan did not provide for a full-time director of the organizational unit responsible for vocational rehabilitation in Florida. He further found that the director lacked adequate authority and responsibility at the district or field level in the various areas. In addition, he found that the plan failed to provide for clear lines of authority over vocational rehabilitation. The hearing officer therefore concluded that the plan did not meet the "organizational unit" requirement of the Rehabilitation Act. After considering Florida's exceptions, the Commissioner adopted the findings and decision of the hearing officer, and he disapproved the Florida Plan (Pet. App. 38-41).

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[1]The Secretary's functions have been delegated to the Commissioner of the Rehabilitation Services Administration. 40 Fed. Reg. 5809 (1975).

Following the Commissioner's decision, the Governor of Florida asked the Secretary to waive the applicable "organizational unit" requirements. He suggested that the waiver be made under the Intergovernmental Cooperation Act, which allows the head of any federal department to waive any requirement that "a single State agency or multi-member board or commission must be established" in connection with a grant-in-aid program (42 U.S.C. 4214). This waiver is permissible only if the head of the federal agency finds "that the objectives of the Federal statute * * * will not be endangered" (*ibid.*). The Secretary responded that the Intergovernmental Cooperation Act did not authorize him to grant the requested waiver, because the Act speaks only to the waiver of "single state agency" requirements and not to the waiver of requirements such as the "organizational unit" requirement (Pet. App. 41-42).

3. On March 25, 1977, Florida filed this action in the United States District Court for the Northern District of Florida. The State sought review of the Commissioner's determination that Florida's plan did not conform to the requirements of the Rehabilitation Act and a declaratory judgment that the "organizational unit" requirements of the Act could be waived (Pet. App. 42-44). The district court held that the Commissioner correctly concluded that the Florida plan failed to conform to the requirements of the Act. The court also held that the requirements imposed by the Act as conditions of state receipt of federal vocational rehabilitation grants do not violate the Tenth Amendment of the Constitution and that the Secretary properly concluded that he lacks the authority to waive the organizational unit requirement (Pet. App. 33-74). The court of appeals affirmed on the basis of the district court's opinion (Pet. App. 31-32).

ARGUMENT

1. Petitioner argues (Pet. 17-27) that the "organizational unit" requirement of the Rehabilitation Act is an unconstitutional infringement of the powers retained by the States under the Tenth Amendment. The "organizational unit" requirement provides that in order to qualify for federal vocational rehabilitation funds, the state's vocational rehabilitation program must have a full-time director with the authority necessary to administer the program.

Petitioner relies almost exclusively on *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), to support its contention that the conditions imposed on federal grants under the Rehabilitation Act are unconstitutional. That case, however, involved a mandatory requirement imposed on the states under the commerce power, while the Rehabilitation Act, an exercise of the spending power, establishes only a set of conditions that states must satisfy if they wish to receive federal grants for vocational rehabilitation. A state is free to decline the proffered assistance; if it does so, it need not comply with the conditions. In *National League of Cities* the Court "express[ed] no view as to whether different results might obtain" if Congress had sought to achieve the goal of minimum wage regulation through use of the spending power. 426 U.S. at 852 n.17.

The constitutional power of Congress to place conditions on the manner in which federal grants are disbursed has repeatedly been sustained. See, *e.g.*, *King* v. *Smith*, 392 U.S. 309, 333 n.34 (1968); *Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275, 295 (1958); *Oklahoma* v. *Civil Service Commission*, 330 U.S. 127, 143 (1947); *Helvering* v. *Davis*, 301 U.S. 619 (1937); *Steward Machine Co.* v. *Davis*, 301 U.S. 548 (1937); *Massachusetts* v. *Mellon*, 262 U.S. 447, 480 (1923). In *North Carolina* v. *Califano*, 445 F. Supp. 532 (E.D.N.C. 1977), aff'd mem., 435 U.S. 962 (1978), this Court affirmed the judgment of a three-judge court that upheld the constitutionality of the National Health Planning and Resources Development Act of 1974, 42 U.S.C. 300k *et*

seq. That statute requires the recipient state to establish a State Health Planning and Development Agency. North Carolina argued that this requirement interfered with the integral operations of state government, particularly because an amendment to the North Carolina Constitution was required in order to comply. This Court found that statutory requirement to be a constitutional exercise of the spending power. In the present case, in which the statute does not require the State to establish a new agency but merely requires that the existing agency meet certain organizational requirements, the burden of the condition imposed by the statute is even less onerous.

The analysis in *National League of Cities* is inapplicable here because of the very different character of the federal action. As this Court has recently observed, governmental power "to encourage actions deemed to be in the public interest is necessarily far broader" than the government's power "to impose its will by force of law." *Maher* v. *Roe*, 432 U.S. 464, 476 (1977). The Rehabilitation Act simply encourages state action that Congress believes worth paying for.[2] It does not command the states; it does not threaten their separate or independent existence. It therefore does not exceed the limitations on Congress' power identified in *National League of Cities*.

Far from being a pervasive interference with a state's authority to structure its programs, the "organizational unit" requirement merely provides that states distributing federal vocational rehabilitation funds must do so through an integral unit headed by a full-time director with adequate administrative authority. For a number of years, Florida's program has been in compliance with the requirement. When the Florida legislature in 1975

[2]In *Buckley* v. *Valeo*, 424 U.S. 1, 57 n.65, 97-104 (1976), this Court drew a parallel distinction, holding that although the government could not forbid a candidate from spending funds, it could use its spending power to induce him not to spend those funds.

undertook a reorganization of its health, social, and rehabilitative services, it was expressly intended that these goals would not conflict with existing federal requirements. See Fla. Stat. Ann. §20.19 (West 1978 Supp.). Indeed, the State has previously maintained that it is in compliance with federal requirements. The requirements of the Act thus cannot fairly be said to work the kind of "deep intrusion into state internal structure and organization" of which petitioner complains (Pet. 24).

2. Petitioner also contends (Pet. 27-29) that the Intergovernmental Cooperation Act permits the Secretary to waive the "organizational unit" requirement of the Rehabilitation Act of 1973. The district court correctly held that both the language of the Intergovernmental Cooperation Act and its legislative history demonstrate that Congress did not intend to permit waiver of the organizational unit requirement of 29 U.S.C. 721)(a)(2) (Pet. App. 47). There is no conflict among the circuits on the construction of the Intergovernmental Cooperation Act, and thus no reason to grant review.

The Intergovernmental Cooperation Act allows only the waiver of a requirement that "a single State agency or multi-member board or commission" administer or supervise a grant-in-aid program (42 U.S.C. 4214). The statute does not reach the "organizational unit" requirement here, which goes beyond a requirement of the kind referred to in the Intergovernmental Cooperation Act. Section 721(a)(1) of the Rehabilitation Act contains a "single state agency" requirement of the type referred to in the Intergovernmental Cooperation Act. That requirement, however, is quite distinct from the organizational unit requirement of Section 721(a)(2). As the district court noted, "Congress was concerned that there be clear lines of authority and responsibility within the state agency over the provision of rehabilitative services, and that

administration of the program be the province of persons concerned almost exclusively with vocational rehabilitation" (Pet. App. 50). This specific statutory concern would be undercut by permitting its waiver in the same fashion as the more general "single state agency" requirement.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NO. 78-1308

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Petitioner,

vs.

JOSEPH A. CALIFANO, JR., etc., *et al.*,
Respondents.

In Support of Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF THE NATIONAL GOVERNORS' ASSOCIATION AS AMICUS CURIAE

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In Support of Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF THE NATIONAL GOVERNORS' ASSOCIATION AS AMICUS CURIAE

The National Governors' Association, pursuant to Rule 42 of the Revised Rules of the Supreme Court of the United States, submits this brief as amicus curiae in support of the petition of the State of Florida Department of Health and Rehabilitative Services ("HRS") for certiorari to review the Judgment entered by the Court of Appeals for the Fifth Circuit on November 27, 1978. Consent to the filing of this brief by the National Governors' Association has been granted by each of the parties, and their letters evidencing such consent are lodged in the office of the Clerk of this Court.

INTEREST OF THE AMICUS CURIAE

The National Governors' Association is incorporated in the District of Columbia and is designated as an instrumentality of the states. Its members are the elected heads of the fifty states, the Commonwealth of Puerto Rico, and the territories of the Virgin Islands, Guam, American Samoa, and the Northern Marianas, whose collective interests the Association represents.

Immediately at issue in this case is the imminent termination of $30 million in federal funding provided by the Department of Health, Education and Welfare ("HEW") received annually by the State of Florida to defray approximately 80 per cent of the costs of administering Florida's vocational rehabilitation ("VR") program. While the inevitable disruption of services to those in need of vocational rehabilitation services, and the resultant loss of state revenue and jobs are matters of independent and substantial significance which should encourage the Court to grant the petition,[1] the interests herein involved extend far beyond those of the State of Florida, but present substantial constitutional issues concerning the distribution of power between the national and state governments.

The March 28, 1978 ruling of the United States District Court of Florida's Northern District, as summarily affirmed on November 27, 1978 by the Fifth Circuit Court of Appeals, was rendered entirely without regard to the merits of the Florida program, yet requires

[1] *See, Commissioner v. Standard Life & Accident Ins. Co.*, 433 U.S. 148, 151 n 5 (1977); *Alaska v. American Can Co.*, 358 U.S. 224, 225 (1959).

Florida to dismantle and restructure its vocational rehabilitation program in a manner which is incompatible with the state's carefully chosen method of delivery of all human services. The impact of this ruling is to legitimatize an unprecedented intrusion by the federal government into integral sovereign functions reserved to the State of Florida and protected by the Tenth Amendment[2] to the United States Constitution, without affording to Florida any opportunity to establish that its program satisfies the relevant federal interests, a showing which Florida was prepared to make but was precluded from so doing.

The Florida vocational rehabilitation program is administered along with seven other social service programs by the Florida Department of Health and Rehabilitative Services. Florida's carefully structured legislative scheme embodied in HRS presently constitutes the nation's only fully integrated scheme providing for the comprehensive delivery of human services. The creation of HRS represents a consolidated effort by the state to coordinate the delivery of these services to its citizens, in order to maximize efficiency and resource allocation and to avoid unnecessary and wasteful duplication of effort. As such, it serves as a possible model for emulation by the various states which are seeking to develop and improve the efficiency of their own governmental structures. The National Governors' Association is convinced that the decision from

[2] U.S. CONST. amend. X:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

which review is sought, if left standing, will have a severely inhibitive effect upon the development and implementation of such state programs, to the substantial detriment of the states and their citizens. Moreover, the rights of the respective states to organize their internal government structures is of central importance to our constitutionally prescribed federal system, the essence of which is undermined by the decision rendered below.

The district court's decision to uphold HEW's cutoff of funds is based exclusively on a determination that Florida's VR program fails to strictly comply with the organizational unit requirement[3] which is set forth in the Federal Rehabilitation Act, and the rules promulgated thereunder, with no provision having been made for consideration of the functional validity of the Florida program. It is submitted that under these circumstances, the organizational unit requirement, while generally a legitimate exercise of congressional power, is unconstitutional as applied to the State of Florida. Although the analysis of the decision from which review is sought is presently confined to the strict organizational unit requirement governing vocational rehabilitation, its rationale and broad implications establish a basis for the similar exercise of federal power in areas other than vocational rehabilitation, by which the fundamental structure of state governments can be profoundly altered.

In addition to the fiscal and political importance of this matter to the State of Florida and the significance

[3]Federal Rehabilitation Act of 1973, 29 U.S.C. §§701, 721(a) (1970, Supp. V 1975); HEW Regulations, 45 C.F.R. §§1361.7-.8 (1976). These provisions are fully set forth in Addendum A, attached hereto.

of the constitutional questions which are raised, questions of first impression[4] are posed concerning the interpretation of the waiver provisions of the Intergovernmental Cooperation Act of 1968,[5] which authorize the head of any federal department or agency which administers a federal program to waive strict compliance by a state with rigid federal guidelines imposed as a condition precedent to the receipt of federal funding, upon a showing by a state that its alternative structure accomplishes federal statutory purposes. The Florida petition accordingly indicates that review is

[4]The Court has expressed a willingness to resolve important questions of first impression construing important federal statutory provisions. See, *American Federation of Musicians v. Wittstein*, 379 U.S. 171, 175 (1964).

[5]Intergovernmental Cooperation Act, 42 U.S.C. §4201, §4214 (1970):

> "Notwithstanding any other Federal law which provides that a single State agency or multimember board or commission must be established or designated to administer or supervise the administration of any grant-in-aid program, the head of any Federal department or agency administering such program may, upon request of the Governor or other appropriate executive or legislative authority of the State responsible for determining or revising the organizational structure of State government, waive the single State agency or multimember board or commission provision upon adequate showing that such provision prevents the establishment of the most effective and efficient organizational arrangement structure within the State government and approve other State administrative structure or arrangements: *Provided*, That the head of the Federal department or agency determines that the objectives of the Federal statute authorizing the grant-in-aid program will not be endangered by the use of such other State structure or arrangements."

further justified because of the need to resolve the waiver issue in view of its obvious importance to federal-state relations.[6]

The court below found that the Intergovernmental Cooperation Act waiver provision was inapplicable, since it was directed expressly and solely at the single state agency requirement,[7] and therefore could not be extended to the organization unit requirement.[8] As a result, Florida was totally precluded from effectively demonstrating that its program fulfills federal statutory purposes designed to assure that quality vocational rehabilitation services be provided, notwithstanding Florida's expressed willingness to demonstrate that it provides such services to those in need in a manner superior in both quality and efficiency to the federal organizational scheme.

Should this Court reject Florida's claim and sustain the findings that waiver is applicable only to the single state agency requirement, it is the contention of the amicus that such a construction inevitably renders unconstitutional the rigid insistence on strict compliance with the organizational unit requirement, in violation of the tenth amendment as applied to the State of Florida, precisely because, in the absence of such a waiver, it substantially intrudes on integral state functions without affording any opportunity by which Florida can

[6] *Leiter Minerals, Inc. v. United States*, 352 U.S. 220, 224-25 (1957).

[7] 29 U.S.C. §721(a)(1) (1970, Supp. V 1975).

[8] 29 U.S.C. §721(a)(2) (1970, Supp. V 1975).

establish that its structure fully accomplishes all federal purposes.[9]

[9] Certainly the federal government is capable of determining whether its underlying purposes are fulfilled by alternative state structures, since it is precisely such an analysis which is made whenever a proper request by a state for a waiver of the single state agency requirement is made under the waiver provision of the Intergovernmental Cooperation Act, 42 U.S.C. §4214 (1970).

QUESTIONS PRESENTED

WHETHER THE FEDERAL GOVERNMENT CAN, CONSISTENT WITH THE TENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, IMPOSE UPON THE STATES AS A CONDITION PRECEDENT TO THEIR RECEIPT OF FEDERAL FUNDING, AN OBLIGATION THAT THEY STRICTLY COMPLY WITH COMPREHENSIVE ORGANIZATIONAL REQUIREMENTS, THEREBY SUBSTANTIALLY INTRUDING UPON THE INTEGRAL FUNCTIONS OF THE STATES, WITHOUT PROVIDING ANY OPPORTUNITY BY WHICH THE STATES CAN DEMONSTRATE THAT THEIR OWN ORGANIZATIONAL STRUCTURE ACCOMPLISHES THE PURPOSES UNDERLYING THE FEDERAL STATUTE?

WHETHER THE IMPOSITION OF THE ORGANIZATIONAL UNIT REQUIREMENT OF THE FEDERAL REHABILITATION ACT IN THE INSTANT CASE IS UNCONSTITUTIONAL UNDER THE TENTH AMENDMENT AS APPLIED TO THE STATE OF FLORIDA, SINCE IT FORCES THE STATE TO STRUCTURE ITSELF IN STRICT COMPLIANCE WITH FEDERAL REQUIREMENTS AS A CONDITION PRECEDENT TO THE RECEIPT OF FEDERAL FUNDS WITHOUT PROVIDING FOR A PROCEDURE WHICH WOULD PERMIT A WAIVER OF STRICT COMPLIANCE

IN THOSE INSTANCES WHERE, AS HERE, THE STATE ORGANIZATIONAL SCHEME MAY BE SHOWN TO FULLY EMBODY THE PURPOSES OF THE FEDERAL REQUIREMENTS?

STATEMENT OF THE CASE

In order to eliminate duplicative and inefficient state agencies, and to simplify state government, the Constitution of the State of Florida was amended in 1968, consolidating all state executive functions into not more than twenty-five departments, excepting those for which special provision was made.[10] Accordingly, the Florida Legislature in 1969 reorganized its entire executive structure. The reorganization provided for the creation of the Department of Health and Rehabilitative Services, with the intent to establish complete coordination of the delivery of human services to improve the efficiency and quality of all social services.[11]

In furtherance of these objectives, efforts commenced in 1973 to regionalize the structure of HRS, in order to maximize resource allocation and to make the delivery of services more adaptable to local conditions. These efforts culminated in the passage by the Florida legislature of the Reorganization Act of 1975, of chapter 20.19 which, as subsequently amended, presently defines the structure of HRS.[12] Included within HRS was Florida's vocational rehabilitation program, which had been providing such services for over fifty years and was one of the oldest state administered social services.

The HRS concept was an attempt to deal comprehensively with the needs of those served by HRS,

[10]FLA. CONST. art. IV, §6.

[11]Governmental Reorganization Act of 1969, FLA. LAWS Ch. 69-106 (1969).

[12]FLA. STAT. §20.19 (1977).

many of whom required services under several programs, rather than to have them touched separately by different divisions functioning independently and without regard to other available services. To accomplish this, the department was divided into three functional divisions — program planning and development, operations, and administration.

The assistant secretary for program planning and development is responsible for "general statewide supervision of the administration of service programs operated by the department."[13] Included among these programs is the vocational rehabilitative program office which is headed by a full-time director who has general responsibility for the State's VR programs.[14]

The operations division implements policy established by the VR program office. Actual delivery of services is provided through eleven district offices, each headed by a district administrator who reports to the assistant secretary for operations. Within each district office there are program supervisors in each of the major program areas, including vocational rehabilitation.[15]

Thus, under the reorganized department, the VR program director is responsible for VR policy and for supervision of the administration of VR programs. At the district level, the VR program supervisor, who is responsible for day-to-day implementation of these

[13]*Id.* §20.19(3)(c).

[14]*Id.* §20.19(3)(c)(2)(e).

[15]*Id.* §20.19(4).

programs, supervises a staff of professional vocational rehabilitation personnel. The district administrator and the assistant secretary for operations supvervise these district level personnel and are bound to operate the program in conformance with state and federal law. The treatment of VR is identical to that of the seven other major program areas within the Department's responsibility.[16]

Shortly after the enactment of the 1975 reorganization, Florida submitted its annual VR plan for fiscal 1976 to the Rehabilitation Services Administration ("RSA"), a unit of HEW. (R. No. 35, Letter of August 14, 1975.)[17] In March, 1976, the RSA Commissioner formally notified Florida of his intention to disapprove it on the ground that it did not confer authority over field operations to the head of the VR unit. (R. No. 1.) Subsequently, Florida requested a formal hearing. (R. No. 2.)

At the hearing RSA maintained that Florida's plan failed to satisfy federal standards because the VR program director did not have "line authority" over staff providing VR services at the district level; because he lacked adequate authority to administer the VR program; and because the plan did not specify "clear lines" of authority for VR program administration. (R.

[16]In addition to the vocational rehabilitation, HRS administers the following social services: Children's Medical Services; Social and Economic Services; Health Programs; Retardation Programs; Aging and Adult Services; Youth Services; and Mental Health. FLA. STAT. §20.19(3)(c)(2)(a)-(h)(1977).

[17]Citations made to the Record ("R") refer to exhibits in the record available to Fifth Circuit Court of Appeals, as originally introduced and properly certified in the administrative proceedings by HEW.

No. 5, Statement of Deficiencies.) The National Rehabilitation Association ("NRA") participated at the hearing in support of the RSA position. The Administrative Law Judge made findings in accordance with the RSA position which were incorporated into a final decision entered by the RSA Commissioner on January 19, 1977. (R. No. 86.)

On January 30, 1977, Florida's Governor requested the HEW Secretary to exercise his authority to waive under the Intergovernmental Cooperation Act and the Joint Funding Simplification Act of 1974[18] the structural requirements of the Rehabilitation Act that had been the basis for the disapproval of the state's plan.[19] The Secretary's response[20] expressed the view that states should have more latitude than at present to organize and manage federally funded programs. Nevertheless, he denied the requests solely on the ground that the waivers were not authorized by the statutes cited, and that the waiver authority under both statutes was confined to the "sole state agency" requirements and did not reach "organizational unit" requirements such as that contained in the Rehabilitation Act.[21]

[18]42 U.S.C. §4255(c) (1970, Supp. IV 1974).

[19]*See* Letter from Governor of Florida to HEW Secretary (January 30, 1977) (attached hereto as Addendum C).

[20]*See* Letter from HEW Secretary to Governor of Florida (March 24, 1977) (attached hereto as Addendum D).

[21]29 U.S.C. §721(a)(2) (1970, Supp. V 1975).

Following the denial of the waivers, suit was instituted by HRS in the district court. HRS sought an order setting aside the disapproval determination of the RSA Commissioner and a declaratory judgment that the HEW Secretary had authority under the Joint Funding Simplification and Intergovernmental Cooperation Acts to grant the waiver requested by Florida.[22]

On cross-motions for summary judgment, the district court decided all issues in favor of HEW and intervenor NRA, holding that the Joint Funding Simplification and Intergovernmental Cooperation Acts conferred no authority to waive the organizational unit requirements of the Federal Rehabilitation Act. Treating the two waiver provisions as being virtually identical, the court concluded that they were only applicable to the "sole state agency" provision, and not to the organizational unit requirement.[23]

The district court also sustained the disapproval determination, holding that the Rehabilitation Act requires that the VR program director possess substantial authority over the entire operation of the program, including field level operations, and that the RSA Commissioner was correct in concluding that the Florida plan did not confer that authority upon him. *Id.* at 282-

[22]Following the institution of suit, HEW, exercising its authority under the Administrative Procedure Act, 5 U.S.C. §705, stayed the termination of funding of Florida's VR program pending the district court's decision, and has subsequently extended the stay pending this Court's determination of Florida's petition. Should the petition be granted, HEW has agreed to extend the stay until this Court has made a final determination on the merits.

[23]*Florida Department of Health and Rehabilitative Services v. Joseph A. Califano,* 449 F.Supp. 274, 280-281 (N.D. Fla. 1976).

283. The state's tenth amendment argument was similarly rejected. *Id.* 283-285.

The Fifth Circuit Court of Appeals, on November 27, 1978, affirmed without opinion the district court's ruling. Accordingly, on February 23, 1979, HRS filed its petition for certiorari, to request review by this Court of the appellate determination.

REASONS FOR GRANTING THE WRIT

FORCING THE STATES TO STRICTLY COMPLY WITH FEDERAL REQUIREMENTS REGARDING STATE GOVERNMENTAL STRUCTURE AS A CONDITION PRECEDENT TO THEIR RECEIPT OF FEDERAL FUNDING, WITHOUT PROVIDING FOR A WAIVER OF SUCH STRICT COMPLIANCE IN THOSE INSTANCES WHERE, AS HERE, THE STATE STRUCTURE MAY BE SHOWN TO FULLY SATISFY THE RELEVANT FEDERAL PURPOSES, IS UNCONSTITUTIONAL AS APPLIED UNDER THE TENTH AMENDMENT, SINCE SUCH A CONSTRUCTION DEPRIVES THE STATE OF ITS RIGHT TO STRUCTURE INTEGRAL STATE FUNCTIONS, INHIBITS THE STATE FROM ATTEMPTING TO REORGANIZE ITSELF TO ACCOMPLISH LEGITIMATE STATE PURPOSES, AND PRESUMES IRREBUTTABLY THAT ANY SUCH NON-CONFORMING REORGANIZATION DEFEATS FEDERAL PURPOSES.

The states need, and are entitled to know, under what circumstances, and to what extent, if any, can the federal government interfere with integral state functions by imposing conditions precedent to the receipt of federal funding pursuant to its spending powers under United States Constitution.[24] The Supreme Court of the United States has not rendered its own opinion in over

[24]U.S. CONST. art. I, §8, Cl. 1; §9, Cl. 7.

thirty years in response to a state's assertion that its integral sovereign functions were being intruded upon in violation of the tenth amendment by the federal imposition upon the states of certain conditions precedent to their receipt of federal funds. *Oklahoma v. United States Civil Service Commission*, 330 U.S. 127 (1947), relied upon heavily in the opinion of the district court below, concerned a determination by the United States Civil Service Commission that a single member of the Oklahoma State Highway Commission was actively engaged in political management and campaigns in violation of the Hatch Act. The option presented to Oklahoma, that of removing a single state employee in order to fully comply with the federal requirement, was far less of an intrusion into state sovereign functions than the federal demands at issue in this case, which require Florida to restructure its entire vocational rehabilitation program and provide such services in a manner different from all other social services, consequently distorting its comprehensive executive reorganization of HRS. Furthermore, the minimal sanction imposed upon Oklahoma was merely the withholding of "an amount equal to two years' compensation" of the official whose activities were called into question,[25] in contrast to the $30 million which Florida stands to lose.

This Court has specifically recognized the uncertain state of the law with respect to the scope of congressional power to affect integral state functions under the spending clause, and has indicated a possible willingness to review this question of critical importance to federal state relations in its recent decision of

[25]*Oklahoma*, 330 U.S., at 133.

National League of Cities v. Usery, 426 U.S. 833, 853 n 17 (1976):

> We express no view as to whether different results might obtain if Congress seeks to affect integral operations of state governments by exercising authority granted it under other sections of the Constitution such as the spending power, art. I, §8, cl. 1. . . .

Usery expressly confirms the existence of the affirmative protection afforded to the states by the tenth amendment, and is fully consistent with this Court's recognition of the constitutional significance of retaining the states as sovereign entities effectively operating within our federal system.[26] Justice Rehnquist, speaking for the Court in *Usery*, stated:

> "While the Tenth Amendment has been characterized as a 'truism,' stating merely that 'all is retained that which has not been surrendered,' *United States v. Darby*, 312 U.S. 100, 124 [85 L.Ed 609, 61 S.Ct. 451, 132 ALR 1430] (1941), it is not without significance. The Amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system." *Usery*, 426 U.S. at 842, 843 (quoting from *Fry v. United States*, 421 U.S. 542, 547 n 7 (1975) (Rehnquist, J., dissenting)).

Furthermore, the Court indicated that tenth amendment issues are raised whenever the effect of the exercise of federal power "displaces state policies regarding the manner in which they will structure delivery of those governmental services which their citizens require."[27] Specifically included within such required services as defined by *Usery* are those concerned with public health.[28]

> These activities are typical of those performed by state and local governments in discharging their dual functions of administering the public law and furnishing public services. Indeed, it is functions such as these which governments are created to provide, services such as these which the States have traditionally afforded their citizens. *Usery*, 426 U.S. at 851.

Florida's right to effectively so structure the delivery of social services to its citizens through its integrated Department of Health and Rehabilitation is at issue in this case.

Although the Court in *Usery* was confronted with an unwarranted displacement of a state's freedom to structure integral operations in areas of traditional governmental functions under Congress' plenary authority conferred by the commerce clause,[29] the

[26] *Nevada v. Hall*, No. 77-1337, slip op., March 5, 1979; *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975); *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973); *Younger v. Harris*, 401 U.S. 37 (1971).

[27] *Usery*, 426 U.S. at 847.

[28] *Id.* at 852.

[29] U.S. CONST. art. 1, §8, cl. 3.

rationale underlying its analysis extends to other sources of congressional power:

> We have repeatedly recognized that there are attributes of sovereignty attaching to every state government which may not be impaired by Congress, not because Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that manner. *Usery*, 426 U.S. at 845.

This Court recognized long ago that the spending clause could not be employed by the Congress to indirectly accomplish objectives which otherwise were constitutionally reserved to the states. In *United States v. Butler*, 297 U.S. 1 (1935), the Court invalidated a congressional enactment the purpose of which was to balance the production and consumption of agricultural commodities, and to stabilize agricultural marketing.[30] Justice Roberts, speaking for the Court in *Butler*, refuted the contention that a provision for voluntary compliance with conditions otherwise encroaching on state sovereignty immunized such conditions from constitutional attack:

> 'If so, constitutional guaranties, so carefully safeguarded against direct assault, are open to destruction by the indirect but no less effective process of requiring a surrender, which, though, in form voluntary, in fact lacks none of the elements of compulsion. . . .'

[30]Agricultrual Adjustment Act, Ch. 25, tit. I, §2, 46 Stat. 730 (1933) (current version at 7 U.S.C. §§601-659 (1970)).

> But if the plan were one for purely voluntary co-operation it would stand no better so far as federal power is concerned. At best it is a scheme for purchasing with federal funds submission to federal regulation of a subject reserved to the states. *Butler*, 297 U.S. at 72-73, quoting from *Frost & F. Trucking Co. v. Railroad Commission*, 271 U.S. 583, 593 (1926).

The dangerous implications of the decision rendered below are to make legitimate a precedent by which Congress can profoundly influence integral state functions by similarly attaching conditions to the receipt of federal monies by any state governmental unit which it chooses to fund. For example, the organizational unit requirement, which Florida's vocational rehabilitation program has been deemed to violate, could be applied to the seven other public service programs administered by HRS, thereby precluding any federal funding for integrated social service delivery programs within the state. Congress could thus accomplish through the exercise of its control over the purse that which would otherwise be beyond its power. "An affirmance of the authority of Congress to so condition the expenditure of an appropriation would tend to nullify all constitutional limitations upon legislative power." *Butler*, 297 U.S. at 74.

Butler's analysis that spending clause conditions are not immunized from constitutional scrutiny has been implicitly reaffirmed in *King v. Smith*, 392 U.S. 309, 333 n 34 (1978):

> There is of course no question that the Federal Government, *unless barred by some controlling constitutional prohibition*, may impose the terms and conditions upon which its money allotments to the States shall be disbursed, and that any state law or regulation inconsistent with such federal terms and conditions is to that extent invalid. (Emphasis supplied.)

It is therefore apparent that affording to a state the option to forego federal assistance in order to avoid intrusive federal conditions, while relevant to any spending clause analysis under *Oklahoma*, is not independently dispositive in an instance where an otherwise permissible exercise of federal power excessively intrudes upon those state activities protected by the tenth amendment.

The choice afforded to Oklahoma to discharge a single employee found to have engaged in political management and campaigning in order to receive federal funding is therefore clearly distinguishable from a pronounced interference with a state's legitimate right to choose the manner in which to deliver essential services to its citizens, as proclaimed in *Usery*. Moreover, to the extent *Oklahoma* relies upon *Darby*, *Usery's* specific qualification of *Darby's* characterization of the tenth amendment as being merely a "truism"[31] undercuts the doctrinal basis supporting *Oklahoma*.

It is also significant to note that at the time the Court decided *Oklahoma* in 1947, total federal aid to

[31]*See* footnote 26, *supra* and accompanying text.

state and local governments amounted to less than $1.7 billion,[32] or less than 10 per cent of their combined budgets. In contrast, nearly $77.9 billion of such aid was appropriated by the federal government in 1978; amounting to approximately one-quarter of the total revenues of state and local governments.[33] Total such grants-in-aid are estimated to rise to $82.9 billion in 1980, over 40 per cent of which shall be administered by HEW.[34] While in 1947 total federal grant-in-aid to the states and their localities for social welfare, health, and security programs amounted to $860 million,[35] by 1980 grant-in-aid funding in the field of public health alone will exceed $14.5 billion.[36] In light of this substantial change in circumstances since the rendering of *Oklahoma* in 1947, which has resulted in a dramatic augmentation of federal power exercised through the spending clause, *Oklahoma*, to the extent its precedential value is applicable,[37] should be revisited.

[32]The Budget of the United States Government for the Fiscal Year 1949, pp. 1303-04.

[33]The Budget of the United States Government for the Fiscal Year 1980, pp. 294-95.

[34]Special Analysis — Budget of the United States Government for the Fiscal Year 1980, Special Analysis H, p. 223.

[35]The Budget of the United States Government for the Fiscal Year 1949, pp. 1303-04.

[36]The budget of the United States Government for the Fiscal Year 1980, pp. 294-95.

[37]This Court recently affirmed without opinion a decision rendered by a three-judge district court panel which relied upon *Oklahoma* to uphold a tenth amendment challenge by North Carolina to federal certificate of need provisions affecting many federal programs, whose purpose is to insure the integrity of federal funding by requiring states to certify as to their need for federal support. *North Carolina v. Califano*, 435 U.S. 962 (1978), *aff'g* 445 F.Supp. 532 (E.D.N.C. 1977).

Since *Usery* at a minimum indicates that a state's freedom to structure the delivery of public health services is worthy of constitutional consideration, it is necessary to determine whether such deference to federalist values are outweighed by countervailing congressional concerns. Such a balancing of interests is appropriate since the circumstances of this case present a classic confrontation of distinct federal and state interests. Justice Blackmun's concurrence in *Usery* indicates that under such a balancing approach, tenth amendment rights would yield "where the federal interest is demonstrably greater and where state facility compliance with imposed federal standards would be essential." 426 U.S. at 856 (Blackmun, J., concurring). The supremacy of federal interests, while generally relevant to an analysis of conflicting federal and state statutes, should not be applicable to federal attempts to regulate the state as an entity:

> But this well-recognized principle of the Supremacy Clause is traditionally associated with federal regulation of persons or enterprises, rather than with federal regulation of the State itself, and it is difficult to understand how it supports the proposition that the States are without a constitutional counterweight which can limit Congress' exercise *against them* of its commerce power.[38]

This Court has expressly applied an approach balancing constitutional interests when police power functions reserved to the states under the tenth amendment conflicted with rights protected by the first and fourteenth amendments:[39]

> Whenever, in such a context, these constitutional protections are asserted against the exercise of valid government powers a reconciliation must be effected, and that perforce requires an appropriate weighing of the respective interests involved. *Konigsberg v. State Bar of California*, 366 U.S. 36, 51 (1961).

Furthermore, the propriety of balancing competing federal interests expressed through the spending power and state sovereign rights protected under the tenth amendment has been implicitly accepted by this Court. In *King v. Smith*, 392 U.S. 309 (1968) the Court ruled invalid an Alabama substitute father regulation preventing children from receiving federal support under the Aid to Families with Dependent Children ("AFDC") Program established under the Social Security Act,[40] since the regulation denied benefits to children even if the substitute father had no legal obligation to support them, thereby conflicting with the substitute father provision of the federal act.[41]

The Court in *King*, clearly weighing the respective state and federal interests, stressed that its holding did not compromise any of Alabama's sovereign functions:

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[38]*Fry v. United States*, 421 U.S. 542, 552 (1975) (Rehnquist, J., dissenting) (emphasis in the original).

[39]*See, Konigsberg v. State Bar of California*, 366 U.S. 36, 51 (1961) and cases cited therein.

[40]42 U.S.C. §§301-1396 (1970).

[41]42 U.S.C. §606(a) (1970).

> We think it well, in concluding, to emphasize that no legitimate interest of the State of Alabama is defeated by the decision we announce today. The State's interest in discouraging illicit sexual behavior and illegitimacy may be protected by other means, subject to constitutional limitations, including state participation in AFDC rehabilitative programs. 392 U.S. at 333-334.

Conversely, Florida has no recourse under the decision below except to drastically reorganize its vocational rehabilitative program in a manner interfering with the state's considered judgment that its interests would be best served by delivering social services through the integrated delivery system embodied in HRS.

Amicus submits that the court below committed reversible error in wholly failing to consider whether the merits of the Florida program satisfied the purposes and policies underlying the Federal Rehabilitation Act, and by totally ignoring the importance to Florida of its right to structure those integral state functions which are protected under the tenth amendment. The organizational unit requirement, while a generally legitimate exercise of congressional power, is, under these circumstances, unconstitutional as applied to the State of Florida.

The administrative determination was premised solely on the basis that Florida's integrated plan failed to strictly comply with the organizational unit requirement of the Federal Rehabilitation Act of 1973, accepting the standard sought by HEW at the administrative pre-hearing conference:

> In the same vein, with reference to issues of relevance and proof, we submit that *the issue is not that of whether or not Florida has been able to devise an organizational structure as good as or better than that required by the Federal Vocational Rehabilitation Act and regulations*, but only whether the proposed Florida Plan of 1976 meets the requirements of the Federal Act and regulations.[42]

Furthermore, the presiding Administrative Law Judge indicated that he would refuse Florida's efforts to admit evidence to substantiate its claim that the quality of treatment afforded under Florida's vocational rehabilitation program was equal or superior to the federal scheme.[43]

Subsequent to the adverse administrative determination, but prior to the decision of the district court, Florida's Governor expressed a willingness to demonstrate to the Secretary of HEW that its vocational rehabilitation program was more effective than the federal program, in connection with Florida's request that the Secretary waive the organizational unit requirement. The HEW Secretary, while indicating his personal belief that states should have more latitude to structure their social service programs than is presently allowed under federal law, refused to entertain Florida's request by asserting that he had no authority to do so.[44]

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[42]Statement of Carl H. Harper, Regional Attorney of the Department of Health, Education and Welfare, Pre-hearing Conference (June 23, 1976) (R. 87, tr. 16-17) (emphasis supplied).

[43]Statement of Hearing Officer, Pre-hearing Conference (June 23, 1976) (R. 87, tr. 43).

[44]*See* Addenda C and D, attached hereto.

Florida has thus been effectively precluded from demonstrating the efficacy of its integrated social service delivery system before any forum. The import of district court's affirmance of both the administrative determination and HEW's denial of Florida's waiver request is to force a state into a dilemma of having to subject itself to an unwarranted and severe intrusion into its freedom to structure itself, in order to avoid a forfeiture of substantial federal funding.

The inevitable net effect of the fifth circuit's affirmance of the district court, if left standing, would be to significantly restrain states' efforts to develop structural mechanisms designed to improve government efficiency. The district court acknowledged the possibility that Florida's approach accomplishes the purposes of the Intergovernmental Cooperation Act and Joint Funding Simplification Act: "It may also be, as Florida emphatically argues, that the 1976 Plan embodies very nearly the kind of laudable experimentation sought to be encouraged by Congress." 449 F.Supp. at 280.

HEW's own expert witness, Dr. Waino W. Suojanen, acknowledged the superiority of the various aspects of the Florida vocational rehabilitation plan:

> I indicate that when it comes to program planning and development that exists in the State of Florida, I think that its a marvelous way of doing things. When we are determining goals and objectives and doing a lot of other things that you show in your plan I think it's one of the best plans ever seen in any organization when it comes to program planning and development, when it comes to knowledge oriented kinds of situations and so on.[45]

Nevertheless, the district court believed that it was legally obliged to terminate Florida's federal funding. By countenancing this result absent any consideration of the merits of the Florida plan and of the importance to the state of its commitment to integrated service delivery, the decision below is unconstitutional, even under a liberal interpretation of federal power:

> Hamilton himself, the leading advocate of broad interpretation of the power to tax and to appropriate for the general welfare, never suggested that any power granted by the Constitution could be used for the destruction of local self-government in the states. Story countenances no such doctrine. It seems never to have occurred to them, or to those who have agreed with them, that the general welfare of the United States, (which has aptly been termed "an indestructible Union, composed of indestructible States,") might be served by obliterating the constituent members of the Union. But to this fatal conclusion the doctrine contended for would inevitably lead. And its sole premise is that, though the makers of the Constitution, in erecting the federal government, intended sedulously to limit and define its powers, so as to reserve to the states and the people sovereign power, to be wielded by the states and their citizens and not to be invaded

[45]Testimony of Waino W. Suojanen, Administrative Hearing of August 3, 1976, (R. 90, tr. 25-26).

> by the United States, they nevertheless by a single clause gave power to the Congress to tear down the barriers, to invade the states' jurisdiction, and to become a parliament of the whole people, subject to no restrictions save such as are self-imposed. The argument when seen in its true character and in the light of its inevitable results must be rejected. *Butler*, 207 U.S. at 77-78.

The State of Florida, and indeed the fifty states, need and are entitled[46] to a determination by the Supreme Court of the United States defining the parameters of federal authority, exercised pursuant to the spending clause, to interfere with integral state functions: "Surely there can be no more fundamental Constitutional question than that of the intention of the Framers of the Constitution as to how authority should be allocated between the National and State Governments." *Fry*, 421 U.S. at 559 (Rehnquist, J., dissenting). In order to resolve these questions of constitutional significance, it is respectfully submitted that a review by the Court of the decisions rendered below is necessary.

[46]In *New York v. United States*, 326 U.S. 572, 574 (1946), the Court ruled that the states deserved a judicial determination by the Supreme Court of the scope of the federal authority to exert its taxing power upon the states: "The strong urging of New York for further clarification of the amendability of States to the taxing power of the United States led us to grant certiorari."

CONCLUSION

Based on the foregoing reasons, authorities, policies and arguments it is respectfully submitted that Florida's HRS petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Addenda

ADDENDUM A

1. Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 357; 29 U.S.C. §§701 *et seq.*

   a. Section 101(a); 29 U.S.C. §721(a):

Annual State plans; general and specific requirements

(a) For each fiscal year in which a State desires to participate in programs under this subchapter, a State shall submit to the Secretary for his approval an annual plan for vocational rehabilitation services which shall—

State agency for plan administration, designation; separate agencies for services to blind and for other services; joint program; political subdivision participation, waiver; qualification of State agency

(1)(A) designate a State agency as the sole State agency to administer the plan, or to supervise its administration by a local agency, except that (i) where under the State's law the State agency for the blind or other agency which provides assistance or services to the adult blind, is authorized to provide vocational rehabilitation services to such individuals, such agency may be designated as the sole State agency to administer the part of the plan under which vocational rehabilitation services are

provided for the blind (or to supervise the administration of such part by a local agency) and a separate State agency may be designated as the sole State agency with respect to the rest of the State plan, and (ii) the Secretary, upon the request of a State, may authorize such agency to share funding and administrative responsibility with another agency of the State or with a local agency in order to permit such agencies to carry out a joint program to provide services to handicapped individuals, and may waive compliance with respect to vocational rehabilitation services furnished under such programs with the requirement of clause (4) of this subsection that the plan be in effect in all political subdivisions of that State:

(B) provide that the State agency so designated to administer or supervise the administration of the State plan, or (if there are two State agencies designated under subclause (A) of this clause) to supervise or administer the part of the State plan that does not relate to services for the blind, shall be (i) a State agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of handicapped individuals, (ii) the State agency administering or supervising the administration of education or vocational education in the State, or (iii) a State agency which includes at least two other major organizational units each of which administers one or more of the major public

education, public health, public welfare, or labor programs of the State;

State rehabilitation bureau; director; staff; major organizational status; separate units for services to blind and for other services

(2) provide, except in the case of agencies described in clause (1)(B)(i)—

(A) that the State agency designated pursuant to paragraph (1) (or each State agency if two are so designated) shall include a vocational rehabilitation bureau, division, or other organizational unit which (i) is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of handicapped individuals, and is responsible for the vocational rehabilitation program of such State agency, (ii) has a full-time director, and (iii) has a staff employed on such rehabilitation work of such organizational unit all or substantially all of whom are employed full time on such work; and

(B)(i) that such unit shall be located at an organizational level and shall have an organizational status within such State agency comparable to that of other major organizational units of such agency, of (ii) in the case of an agency described in clause (1)(B)(ii), either that such unit shall be so located and have such status, or that the director of such unit shall be the executive officer of such State agency; except that, in the

case of a State which has designated only one State agency pursuant to clause (1) of this subsection, such State may, if it so desires, assign responsibility for the part of the plan under which vocational rehabilitation services are provided for the blind to one organizational unit of such agency, and assign responsibility for the rest of the plan to another organizational unit of such agency, with the provisions of this clause applying separately to each of such units;

b. Section 101(b); 29 U.S.C. §721(b):

Approval or disapproval by Secretary; notice and hearing

(b) The Secretary shall approve any plan which he finds fulfills the conditions specified in subsection (a) of this section, and he shall disapprove any plan which does not fulfill such conditions. Prior to such disapproval, the Secretary shall notify a State of his intention to disapprove its plan, and he shall afford such State reasonable notice and opportunity for hearing.

c. Section 101(d); 29 U.S.C. §721(d):

Judicial review; venue; record; agency action provisions applicable

(d) If any State is dissatisfied with the Secretary's action under subsection (b) or (c) of this section, such State may appeal to the

United States district court for the district where the capital of such State is located and judicial review of such action shall be on the record in accordance with the provisions of chapter 7 of Title 5.

2. HEW Regulations, Part 1361, 45 C.F.R. §§1361.7, 1361.8 (1976):

§1361.7 Organization of the State agency.

(a) *Organization.* The State plan shall describe the organizational structure of the State agency, including a description of organizational units, the programs and functions assigned to each, and the relationships among such units within the State agency. Such descriptions shall be accompanied by organizational charts reflecting:

(1) The relationship of the State agency to the Governor and his office and to other agencies administering major programs of public education, public health, public welfare, or labor of parallel stature within the State government, and

(2) The internal structure of the State agency. The organizational structure shall provide for all the vocational rehabilitation functions for which the State agency is responsible, for clear lines of administrative and supervisory authority, and shall be suited to the size of the vocational rehabilitation program and the geographic areas in which the program must operate.

(b) *Organizational unit.* Where the designated State agency is of the type specified in §1361.6(b) (2) or

(3), or §1361.6(c), the State plan shall provide that the agency (or each agency, where two such agencies are designated), shall include a vocational rehabilitation bureau, division or other organizational unit which:

(1) Is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation of handicapped individuals, and is responsible for the administration of such State agency's vocational rehabilitation program, which must include the determination of eligibility for and the provision of vocational rehabilitation services under the State plan:

(2) Has a full time administrator in accordance with §1361.8; and

(3) Has a staff employed on such rehabilitation work of such organizational unit, all or substantially all of whom are employed full time on such work.

(c) *Location of organizational unit.*

(1) The State plan shall provide that the organizational unit, specified in paragraph (b) of this section, shall be located at an organizational level and shall have an organizational status within the State agency comparable to that of other major organizational units of such agency, or in the case of an agency described in §1361.6(b) (2), the unit shall be so located and have such status, or the administrator of such unit shall be the executive officer of such State agency. In evaluating the comparability of the organizational level and the organizational status of the unit, the Commissioner will give consideration to such factors as the directness of the reporting line from the administrator of

the organizational unit for vocational rehabilitation to the chief officer of the designated State agency; the title, status and grade of the administrator of the organizational unit for vocational rehabilitation as compared with those of the heads of other organizational units of the State agency; the extent to which the administrator of the organizational unit for vocational rehabilitation can determine the scope and policies of the vocational rehabilitation program; and the kind and degree of authority delegated to the administrator of the organizational unit for the administration of the vocational rehabilitation program.

(2) In the case of a State which has not designated a separate State agency for the blind as provided for in §1361.6, such State may, if it so desires, assign responsibility for the part of the plan under which vocational rehabilitation services are provided for the blind to one organizational unit of the State agency and assign responsibility for the rest of the plan to another organizational unit of such agency, with the provisions of paragraphs (b) and (c) (1) of this section applying separately to each of such units.

§1361.8 State administrator.

The State plan shall provide that there shall be a full-time State administrator who shall direct the State agency specified in §1361.6(b) (1) or the organizational unit specified in §1361.7(b).

ADDENDUM B

Florida Reorganization Act of 1975, Fla. Stat. Ann., §20.19

20.19 Department of Health and Rehabilitative Services

There is created a Department of Health and Rehabilitative Services.

(1) Purpose.—The purpose of the reorganization of the Department of Health and Rehabilitative Services is to integrate the delivery of all health, social, and rehabilitative services offered by the state to those citizens in need of assistance, herein referred to as "clients." The purpose of the department is to:

(a) Provide such assistance as is authorized to all eligible clients in order that they might achieve or maintain economic self-support and self-sufficiency to prevent, reduce, or eliminate dependency.

(b) Prevent or remedy the neglect, abuse, or exploitation of children and of adults unable to protect their own interests.

(c) Aid in the preservation, rehabilitation, and reuniting of families.

(d) Prevent or reduce inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care.

(e) Secure referral or admission for institutional care when other forms of care are not appropriate, or to provide services to individuals in institutions when necessary.

(f) Prevent the occurrence and spread of communicable diseases and other physical and mental diseases and disabilities to the maximum degree possible.

(g) Promote the maintenance and improvement of health and mental health.

(h) Disseminate health information to the public with recommendations for self-help aimed at the prevention of disease and the maintenance and improvement of the health of all residents and visitors in Florida.

(i) Plan and develop health resources to assure effective and efficient delivery of high quality health services fully accessible to all citizens.

(2) Secretary of health and rehabilitative services; deputy secretary.—

(a) The head of the department is the secretary of health and rehabilitative services. The secretary shall be appointed by the governor subject to confirmation by the senate. The secretary shall serve at the pleasure of the governor.

(b) The secretary shall appoint a deputy secretary who shall act in the absence of the secretary. The deputy secretary shall be directly responsible to the secretary

and shall perform such duties as are assigned to him by the secretary. He shall serve at the pleasure of the secretary.

* * *

(3) Assistant secretaries.—

(a) The secretary shall appoint an assistant secretary for operations, an assistant secretary for program planning and development, and an assistant secretary for administrative services, each of whom shall serve at the pleasure of, and be directly responsible to, the secretary. The secretary shall appoint a deputy assistant secretary for program planning and a deputy assistant secretary for state health planning and development, each of whom shall serve at the pleasure of the secretary and shall be directly responsible to the assistant secretary for program planning and development.

(b) The assistant secretary for operations shall be responsible for, and have line authority over, all service program operations of the department, including the management of all institutions and residential treatment programs, assuring that such programs comply with federal and state laws and regulations, and such other duties as are assigned to him by the secretary. However, he shall delegate as much authority for the administration of service programs within the districts as practicable to the respective district administrators. The assistant secretary for operations shall have line authority over all departmental employees engaged in providing services directly to the client or support services therefor.

(c) The assistant secretary for program planning and development shall have responsibility for general statewide supervision of the administration of service programs operated by the department and such other program development and planning duties as are assigned to him by the secretary. General statewide supervision of the administration of service programs shall mean service program development and planning; program research; identifying client needs and recommending solutions and priorities; developing client service programs, including the policies and standards therefor; providing technical assistance to the district administrators; assisting the district administrators in staff development and training; reviewing and monitoring district-level program operations; assuring compliance with statewide program standards and performance criteria; assuring uniform program quality among districts; developing funding sources external to state government; and obtaining, approving, monitoring, and coordinating research and program development grants; but shall not involve line authority over any service program operations of the department, including the management of institutions and residential treatment programs.

1. Program offices shall be designed to operate in a staff capacity to the assistant secretary for program planning and development. Each program office shall be headed by a program staff director who shall be appointed by, and serve at the pleasure of, the secretary and be directly responsible to the assistant secretary for program planning and development. In no case shall the total professional staff of all of the program offices combined exceed 450 persons. The assistant secretary for program planning and development shall delegate to

the program offices the following responsibilities, which shall include, but not be limited to:

a. Identification of client needs.

b. Intra-program policy development.

c. Short-term and long-term intra-program planning.

d. Intra-program standards setting, monitoring, and quality control.

e. Intra-program staff development, training, and technical assistance programs.

f. Advising the assistant secretary for program planning and development and others within the department, upon request, on issues within their areas of substantive expertise.

g. Acting as liaison, when assigned by the assistant secretary for program planning and development, to other governmental agencies and the public on programmatic issues.

h. Developing state program plans.

i. Developing resource forecasts and working within the state on community resource development.

j. Quality control.

k. Statewide supervision of the administration of service programs.

l. Any other program planning and development duties assigned by the secretary.

2. The following program offices are established:

a. Children's Medical Services Program Office. The responsibilities of this office encompass all children's medical services programs operated by the department.

b. Social and Economic Services Program Office. The responsibilities of this office encompass all income support and related social services programs within the department, such as aid to families with dependent children (AFDC), food stamps, supplemental security income (SSI) supplemental payments, AFDC child support enforcement, food distribution, and medicaid; protective services and all dependency programs located in the Division of Family Services prior to the effective date of this act; adoptions; child care; children in need of supervision and a proportionate share of programs located in the Division of Youth Services prior to the effective date of this act, as provided in chapters 39 and 959; and foster care programs, including those located in the Division of Family Services and the Division of Youth Services prior to the effective date of this act, in proportionate relationship to the responsibilities for children in need of supervision.

c. Health Program Office. The responsibilities of this office encompass all health programs operated by the department, including county health departments, and the review and coordination of departmental health

services, as well as the insurance of an accepted level of quality.

d. Retardation Program Office. The responsibilities of this office encompass all retardation programs operated by the department. In addition, responsibility for all developmental disabilities, including cerebral palsy and epilepsy, shall be located here.

e. Vocational Rehabilitation Program Office. The responsibilities of this office encompass all vocational rehabilitation programs operated by the department.

f. Aging and Adult Services Program Office. The responsibilities of this office encompass all aging and adult programs operated by the department. In addition, all responsibilities for the adult services programs located in the Division of Family Services prior to the effective date of this act shall be assigned to this program office.

g. Youth Services Program Office. The responsibilities of this program office encompass all programs operated by the department relating to delinquent children.

h. Mental Health Program Office. The responsibilities of this office encompass all mental health programs operated by the department. In addition, the responsibility for forensic programs shall be located here.

* * *

(d) The assistant secretary for administrative services shall be responsible for:

1. Providing administrative and management support services above the district level.

2. Monitoring administrative and management support services in the district.

3. Developing and implementing uniform policies, procedures, and guidelines with respect to personnel administration, finance and accounting, budget, grants management and disbursement, procurement, information and communications systems, management evaluation and improvement, and general services, including housekeeping, maintenance, and leasing of facilities.

4. Performing such other administrative duties as are assigned to him by the secretary.

(4) Service districts.—

* * *

(b) The secretary shall appoint a district administrator for each of the service districts. Each district administrator shall serve at the pleasure of the secretary and shall be directly responsible to the assistant secretary for operations. Each district administrator shall have direct line authority over all departmental programs assigned to the district. In addition to those responsibilities assigned by law, the district administrator shall carry out those duties delegated to him by the assistant secretary for operations. The salary of this position shall be comparable to that of a division director of a state agency.

(c) The duties of the district administrator shall include, but not be limited to:

1. Ensuring that the administration of all service programs is carried out in conformity with statewide service plans and any other policies, procedures, and guidelines established by the secretary.

2. Administering the offices of the department within the district and directing and coordinating all personnel, facilities, and programs of the department located in that district, except as otherwise provided herein.

3. Applying standard information, referral, intake, diagnostic and evaluation, and case management procedures established by the secretary. Such procedures shall include a single intake system for delinquency and dependency juvenile programs.

4. Centralizing to the greatest extent possible the administrative functions associated with the provision of services of the department within the district.

5. Coordinating the services provided by the department in the district with those of other public and private agencies which provide health, social, educational, or rehabilitative services within the district.

6. Appointing district program managers, program supervisors, and the superintendent of each institution within the district and approving all other personnel appointments within the district.

7. Establishing such policies and procedures as may be required to discharge his duties and implement and conform the policies, procedures, and guidelines established by the secretary to the needs of the district.

8. Transferring up to 10 percent of the total district budget, with the approval of the secretary, to maximize effective program delivery, the provisions of ss. 216.202 and 216.351 notwithstanding.

(d) To assist him in the discharge of his duties, each district administrator may appoint a district program manager for health services and a district program manager for social services. Each district administrator shall appoint a district manager for administrative services. Each district program manager and the district manager for administrative services shall serve at the pleasure of the district administrator.

(e) There may be program supervisors in each district who shall serve in a line capacity to the district administrator and report directly to the district administrator or his designee. Program supervisors shall be appointed by the district administrator in conformity with qualifications established through state personnel system procedures. Program supervisors may be employed on a full-time, part-time, or fee-for-service contractual basis. The duties of a program supervisor shall include, but not be limited to:

1. Administering district service programs in conformity with statewide policies, procedures, and guidelines established by the secretary.

2. Recommending changes in district program policy.

3. Identifying and developing community resources.

4. Identifying district needs.

5. Serving as program spokesman in educating the public as to the availability of programs and the needs of clients.

6. Serving as primary staff development advisor in assessing the needs of staff and developing training and staff development programs.

(f) There shall be programs at the district level in the following areas: aging and adult services, children's medical services, health, mental health, retardation, social and economic services, vocational rehabilitation, and youth services. There may be a program supervisor for each program, or the district administrator may combine any two or more programs under a program manager or program supervisor, if such arrangement is approved by the secretary.

(g) The district manager for administrative services shall provide the following administrative and management support services to the district in accordance with the uniform policies, procedures, and guidelines established by the assistant secretary for administrative services:

1. Finance and accounting.

2. Grants management and disbursement.

3. Personnel administration.

4. Purchasing and procurement.

5. General services, including housekeeping and maintenance of facilities.

6. Assisting the district administrator in preparation of the district budget request and administration of the approved operating budget.

7. Other administrative duties as assigned by the district administrator.

(9) Conformity with federal statutes and regulations. — It is the intent of the Legislature that this act shall not conflict with any federal statute or implementing regulation governing federal grant-in-aid programs administered by the department. Whenever such a conflict is asserted by the applicable agency of the Federal Government, the secretary of the department shall submit to the United States Department of Health, Education and Welfare, or other applicable federal agency, a request for a favorable policy response or a waiver of the conflicting portions. If such request is denied, as certified in writing by the Secretary of the United States Department of Health, Education and Welfare or head of other applicable federal agency, the secretary of the department is authorized to make the adjustments in the organization and state service plan prescribed by this act which are necessary for conformity to federal statutes and regulations. Prior to making such adjustments, the secretary shall provide to

the Speaker of the House of Representatives and the President of the Senate an explanation and justification of the department's position and shall outline all feasible alternatives consistent with the provisions of this section.

ADDENDUM C

January 30, 1977

Honorable Joseph A. Califano, Jr.
Secretary, Department of Health,
Education and Welfare
330 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Califano:

During the past year Florida has been involved in extensive discussions with the Department of Health, Education and Welfare regarding the State's vocational rehabilitation program and Federal requirements affecting the State's internal organizational administration of this important program.

We believe that the Florida Reorganization Act does provide the Vocational Rehabilitation Program Office with adequate authority to exercise statewide responsibility for the direction of the Vocational Rehabilitation Program. In order to demonstrate that our proposal will more effectively manage the delivery of vocational rehabilitation services as well as link these services to other vital human services, we are requesting a waiver under the Intergovernmental Cooperation Act or the Joint Funding Simplification Act and a stay of termination of federal funds scheduled for March 31, 1977.

We provide vocational rehabilitation services to thousands of handicapped Floridians so that they may become self-sufficient and productive citizens. Federal

financial assistance is authorized by the Rehabilitation Services Act of 1973, administered by your Department's Rehabilitation Services Administration. Florida is receiving more than $29 million annually from this program. The Act requires the state to designate a sole state agency to administer the program. Within this sole state agency the state must have a vocational rehabilitation organizational unit which (i) is primarily concerned with vocational rehabilitation, (ii) has a full-time director, and (iii) has a staff substantially all of whom are employed full-time in vocational rehabilitation work.

In 1975 the Florida Department of Health and Rehabilitative Services was reorganized. The Florida Reorganization Act provides for a vocational rehabilitation program office director who is given broad responsibility for statewide supervision of administration of the program. The State is organized into eleven geographical districts and the day-to-day administration of the vocational rehabilitation program, along with all the other programs of the Department, is assigned to district administrators. In each district, there is a vocational rehabilitation program supervisor who is selected by the district administrator with the concurrence of the vocational rehabilitation program office director.

An initial plan was submitted in August 1975 following extended negotiations. Florida submitted its final Fiscal Year 1976 vocational rehabilitation plan in January 1976. However, the Commissioner of Rehabilitation Services Administration notified me of his intent to disapprove the plan on March 15, 1976 on the grounds that the State's internal administrative hierachy did not conform to the single state agency/single organizational unit requirement of the Rehabilitation Services Act. Secretary Mathews assured me that federal vocational rehabilitation funds would continue to be made available to Florida during the administrative proceedings. An administrative proceeding (RSA-1) was commended solely to determine whether the Florida Plan met the requirement of the Rehabilitation Services Act. While we believe that Florida's plan would result in improved vocational rehabilitation services, this issue was expressly excluded from consideration in the administrative proceeding. A final order was entered by the Commissioner on January 19, 1977, which found that the Florida plan did not comply with the single organizational unit requirements of the Rehabilitation Services Act (attachment 1). The Commissioner ordered that federal vocational rehabilitation funding to the Florida Department of Health and Rehabilitative Services be terminated March 31, 1977.

While judicial review of the Commissioner's January 19 order is available, I would like to request that you resolve this matter administratively. Specifically, I wish to request that you:

1. waive the single state agency/single organizational unit requirement of the Rehabilitation Services Act pursuant to your authority under Section 204, Intergovernmental Cooperation Act of 1968, 42 U.S.C. §4214, or

2. approve Florida's application to jointly administer the vocational rehabilitation program and the State's social services program authorized by Title XX of the Social Security Act, 42 U.S.C. §1397 et. seq., and waive the rigid organizational requirements of the

Rehabilitation Services Act pursuant to your authority under the Joint Funding Simplification Act of 1974, 42 U.S.C. §4255 (c).

I have attached a more detailed explanation of these requests (attachments 2 and 3).

The final order in the administrative proceeding RSA-1 specifies that federal vocational rehabilitation funding to the Florida Department of Health and Rehabilitative Services will terminate March 31, 1977. In setting this date, the Commissioner gave Florida the maximum time allotted under the ad hoc rules of practice and of procedure in RSA-1. This is deeply appreciated. While the ad hoc rules require a March 31 termination, discretion is vested in you or the Commissioner to stay the effective date of the fund termination order pursuant to the Administrative Procedure Act, 5 U.S.C. §705. This law authorizes a stay pending judicial review when the agency finds that justice so requires. Attachment 4 is a memorandum of law discussing the appropriateness of granting a stay of the order terminating federal funding to Florida.

In light of Florida's request for a waiver under the Intergovernmental Cooperation Act and the Joint Funding Simplification Act, it appears that a stay of the fund termination order in RSA-1 is most appropriate. This stay would insure orderly action on these two waiver requests and would maintain stability in Florida's Vocational Rehabilitation Program. It is my sincere desire that this matter can be resolved without the expense, inconvenience, and delay attending a judicial proceeding. The granting of a stay would be mutually beneficial.

A collateral matter which has arisen is Florida's compliance with its 1975 state plan for vocational rehabilitation. This plan was submitted prior to the Florida Reorganization Act and specified that the program would be administered by the Division of Vocational Rehabilitation. Secretary Mathews assured me that Florida would receive funding pursuant to the 1975 plan during the pending of RSA-1. We have received information from your predecessors that a move may be made to invoke sanctions against Florida for attempting to comply with the State Reorganization Act prior to a final decision on the Fiscal Year 1976 State Plan. Attachment 5 is a January 18, 1977 letter from Secretary Mathews to Mr. William J. Page, Jr., regarding this matter. Inasmuch as favorable action on the waivers requested above would [illegible] any compliance issue regarding the Fiscal Year 1975 plan, it is requested that all action on the 1975 compliance issue be suspended until you have an opportunity to evaluate the waiver requests.

I appreciate your personal interest in our problem. You may be assured that we are committed to building harmonious relationships with you and the Department of Health, Education and Welfare.

With kind regards,

Sincerely,

/s/ Reubin O'D. Askew
Governor

ROA/ml
Enclosures
cc: Mr. William J. Page, Jr.

ADDENDUM D

Honorable Reubin O'D. Askew
Governor of Florida
Tallahassee, Florida 32301

Dear Governor Askew:

This is in response to your letter of January 30 concerning the "organizational unit" requirement as it affects the Florida Vocational Rehabilitation program. I apologize for the delay in responding.

Your letter requests a waiver of that requirement under either section 204 of the Intergovernmental Cooperation Act of 1968 or section 6 (c) of the Joint Funding Simplification Act of 1974. It also requests a stay, under 5 U.S.C. S705, pending action on those waiver requests of Commissioner Adams' final order terminating Florida Vocational Rehabilitation funding on March 31.

After lengthy and repeated analysis by my General Counsel-Designate, I have concluded that I do not have the legal authority to grant any of your requests. The decision is reached because of restrictions in the law and does not reflect my personal view that states should have more latitude than at present to organize and to manage programs funded by the Federal government.

Section 204 of the Intergovernmental Cooperation Act of 1968 authorizes waiver, under certain circumstances, of a statutory requirement that a program be administered by a "single State agency or multimember board or commission." The Rehabilitation Act of

1973, as you know, not only requires that the program be administered through a "sole State agency" but also requires, if that agency has (as it does in your State) responsibilities other than vocational rehabilitation, that there be in that agency an "organizational unit" responsible for the program.

These are two quite different requirements. The authority offered by section 204 permits waiver of the "sole State agency" requirement, but it does not permit waiver of the "organizational unit" requirement in the Rehabilitation Act of 1973.

Section 6(c) of the Joint Funding Simplification Act authorizes waiver, under certain circumstances, of a requirement that a "single or specific public agency" administer a program. Not only does the same problem arise here as arises under section 204, but also a problem of a different order arises. The Office of Management and Budget, which has been delegated by the President the authority to administer the Joint Funding Simplification Act, construes section 6(c) as authorizing only waiver of administratively imposed requirements, not waiver of any statutory requirements.

Section 705 of title 5, U.S. Code, authorizes an agency to postpone the effective date of an administrative decision "pending judicial review" of that decision. It does not authorize an agency to stay an administrative decision when, as in your case, no judicial review is pending.

If you should seek judicial review of the Commissioner's final order, I am sure that the Comissioner at that time would be pleased to entertain your request

for a stay of that order. If you should also, as a part of that proceeding or otherwise, establish by court order that the Intergovernment Cooperation Act waiver authority reaches to "separate organizational unit" as well as "single State agency" requirements, a waiver request under that statute would be appropriate.

I regret that I cannot at the present time be more helpful to you.

Sincerely,

/s/ Joseph A. Califano, Jr.
Joseph A. Califano, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of April, 1979, three copies of the brief of the National Governors' Association, as amicus curiae in support of the petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit were mailed, air mail postage prepaid, to the Solicitor General, Department of Justice, Washington, D.C. 20530; Carl Harper, Regional Attorney, Department of Health, Education and Welfare, Room 323, 50 7th Street, Northeast, Atlanta, Georgia 30323; Clinton Ashmore, Assistant U.S. Attorney, Federal Building, Tallahassee, Florida 32302; Allen Snyder, Attorney for National Rehabilitation Association, 815 Connecticut Avenue, Northwest, Washington, D.C. 20006; and Steven Nall, General Counsel, Florida Department of Health and Rehabilitative Services, 1323 Winewood Boulevard, Tallahassee, Florida 32301.

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